MONROE COUNTY

LAND DEVELOPMENT CODE

ADOPTED 04/13/2016

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Chapter 101 GENERAL PROVISIONS

Sec. 101-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned means the voluntary discontinuation of a use. When the use of a property has ceased and the property has been vacant for 18 months, abandonment of use will be presumed unless the owner can show that a diligent effort has been made to sell, rent, or use the property for a legally permissible use. This excludes temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

Access means ingress or egress to a parcel of land.

Accessory use or *accessory structure* means a use or structure that:

(1) Is subordinate to and serves an existing principal use or principal structure; and
(2) Each individual accessory use or accessory structure as well as in total/combined, is subordinate in area (for this definition docks, pools, pool decks, driveways are excluded from the total area), extent and purpose to an existing principal use or principal structure served; and
(3) Contributes to the comfort, convenience or necessity of occupants of the principal use or principal structure served; and
(4) Is located on the same lot/parcel or on a lot/parcel that is under the same ownership as the lot/parcel on which the principal use or principal structure is located; and
(5) Is located on the same lot/parcel or on a contiguous lot/parcel as an existing principal use or principal structure, excluding accessory docking facilities that may be permitted on adjacent lots/parcels pursuant to section 118-12; and
(6) Is located in the same land use (zoning) district as the principal use or principal structure, excluding off-site parking facilities pursuant to section 114-67.

Accessory uses include the utilization of yards for home gardens, provided that the produce of the garden is for a non-commercial purpose. In no event shall an accessory use or structure be established prior to the principal use to which it is accessory. With approval from the Planning Director, an accessory use or structure may continue if its principal use or structure is discontinued or removed for redevelopment, provided that the owner is moving forward with continual development and with active concurrent permits for redevelopment of a principal use or structure. Accessory uses shall not include second dwelling units or any other habitable structures that are occupied by a separate and independent resident.

Adjacent parcel means a parcel of land sharing a boundary with another parcel of land at one or more points of intersection. For purposes of this land development code, an intervening road,

right-of-way or easement shall not eliminate nor destroy the adjacency of the two parcels, except for U.S.1.

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 restrictions provided they meet the criteria established in the Land Development Code.

Adverse impacts, stormwater management, means modifications, alterations, or effects on groundwaters, surface waters or wetlands, including quality, quantity, hydrodynamics, i.e., currents, flow patterns, surface area, species composition, living resources, or usefulness which are or may be potentially harmful to human health and safety, to biological productivity or stability, or which interfere with lawful enjoyment of life or property, including secondary, cumulative, and direct impacts.

Affordable housing.

(1) *Affordable housing* means residential dwelling units that meet the following requirements:

   a. Meet all applicable requirements of the United States Department of Housing and Urban Development minimum property standards as to room sizes, fixtures, landscaping and building materials, when not in conflict with applicable laws of the county; and
   b. A dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents either 50 percent (very low income) or 80 percent (low income) or 100 percent (median income) or 120 percent (moderate income) of the monthly median adjusted household income for the county.

(2) *Affordable housing owner occupied, low income,* means a dwelling unit occupied only by a household whose total household income does not exceed 80 percent of the median monthly household income for the county.
(3) *Affordable housing owner occupied, median income,* means a dwelling unit occupied only by a household whose total household income does not exceed 100 percent of the median monthly household income for the county.
(4) *Affordable housing owner occupied, moderate income,* means a dwelling unit occupied only by a household whose total household income does not exceed 160 percent of the median monthly household income for the county.
(5) *Affordable housing owner occupied, very low income,* means a dwelling unit occupied only by a household whose total household income does not exceed 50 percent of the median monthly household income for the county.
(6) *Affordable housing trust fund* means a trust fund established and maintained by the county for the purpose of preserving existing and promoting creation of new affordable and employee housing. Funds collected for and deposited in the trust fund shall be used

exclusively for purposes of creating, preserving or maintaining affordable and employee housing in the Florida Keys.

(7) *Affordable rental housing, low income,* means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents up to 80 percent of the monthly median adjusted household income for the county.

(8) *Affordable rental housing, median income,* means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents up to 100 percent of the monthly adjusted median household income for the county.

(9) *Affordable rental housing, moderate income,* means a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents up to 120 percent of the monthly median adjusted household income for the county.

(10) *Affordable rental housing, very low income,* means a rental dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of the amount that represents up to 50 percent of the monthly median adjusted household income for the county.

(11) *Employee housing* means an attached or detached dwelling unit that is intended to serve as affordable, permanent housing for working households, which derive at least 70 percent of their household income from gainful employment in the county and meet the requirements for affordable housing as defined in this section and as per section 139-1.

(12) *Employer-owned rental housing* means an attached or detached dwelling unit owned by a firm, business, educational institution, non-governmental or governmental agency, corporation or other entity that is intended to serve as affordable, permanent housing for its employees. This category of employee housing shall be located on the same parcel of land as the nonresidential use.

(13) *Inclusionary housing* means the resulting affordable and/or employee housing created or preserved with the development and/or redevelopment of a parcel where provisions of approved development agreements or orders implement and promote affordable and/or employee housing goals, objectives and policies contained in the plan by requiring set-asides for affordable and/or employee housing units.

(14) *Median income, rental rates and qualifying incomes table,* means eligibility requirements compiled each year by the planning department based upon the median annual household income published for the county on an annual basis by the U.S. Department of Housing and Urban Development and similar information for median and moderate income levels from the Florida Housing Finance Corporation. Affordable housing eligibility requirements for each household will be based upon median annual household income adjusted by family size, as set forth by the U.S. Department of Housing and Urban Development and the Florida Housing Finance Corporation. The county shall rely upon this information to determine maximum rental rates and maximum household incomes eligible for affordable housing rental or purchase.

(15) *Monthly median household income* means the median annual household income for the county divided by 12.

(16) *Deed restriction,* a*ffordable housing* means a recorded restriction on a residential dwelling unit for a period of 99 years restricting occupancy and/or purchase to households that meet the requirements of the income categories listed above.

Agricultural use means agriculture, horticulture, floriculture, viticulture, mariculture/aquaculture, forestry, groves, nurseries, dairy, livestock, poultry, and any and all forms of farm products and farm production.

Aircraft means any motor vehicle or contrivance which is used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

Airport means any area of land or water, or any manmade object or facility located thereon, which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. There are both public and private airports, which are differentiated as follows:

(1) A public airport is publicly or privately owned, meets minimum safety and service standards, and is open for use by the public; and
(2) A private airport is publicly or privately owned, and is available for use by invitation of the licensee. Services may be provided if authorized by the Florida Department of Transportation.

Airport use means fixed- and rotary-wing aircraft operations, which may include retail sales and service operations related to public or general aviation, including aircraft sales, repair and storage, commercial shipping and storage, and restaurants designed to serve aviation passengers, and other airport-related public uses. However, the use of a site by any ultra-light aircraft that meets the criteria for maximum weight, fuel capacity and airspeed established for such aircraft by the U.S. Federal Aviation Administration shall be considered an airport use if the site is within five nautical miles of either a public or military airport or 3,000 feet from the boundaries of a private airport.

Airspace obstruction height means the maximum vertical elevation of the highest part of any object or structure, including trees or landscaping, with respect to the nearest airport runway threshold elevation.

Alley means a right-of-way providing a secondary means of access and service to abutting property.

Allocated density. See "*Density, allocated*."

Amendment means any action of the County which has the effect of amending, adding to, deleting from or changing the adopted comprehensive plan, land development code, or map or map series.

Application means a written request, in such form, and containing all necessary information, as established by the County

Aquifer means an underground formation permeable enough to transmit, store or yield quantities of salt or fresh water.

Area of special flood hazard means the land subject to a one percent or greater chance of flooding in any given year.

Artificial light or *artificial lighting* means the light emanating from any manmade or man-controlled device.

Available (as applied to a publically-owned or investor-owned sewerage system) means that the sewerage system is capable of being connected to the plumbing of an establishment or residence, is not under a Department of Environmental Protection moratorium, and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building between floor and ceiling that may be partly below and partly above grade.

Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beach berm means a bare, sandy shoreline with a mound or ridge of unconsolidated sand that is immediately landward of, and usually parallel to, the shoreline and beach. The sand is calcareous material that is the remains of marine organisms such as corals, algae and mollusks. The berm may include forested, coastal ridges and may be colonized by hammock vegetation.

Beekeeping use means the raising, caring for, and breeding of honeybees at an apiary site.

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.

Best management practices, stormwater management, means those methods of stormwater management recognized by experts in the field as the most effective for treating or managing stormwater runoff.

Bird rookery means a communal nesting ground for gregarious birds.

Board of County Commissioners means the county commission, also known as the BOCC, of the county.

Breakaway walls means walls of any construction intended to collapse under stress without jeopardizing the structural support of the structure so that the impact on the structure by abnormally high tides or wind-driven water is minimized.

Buffer/Bufferyard means a land area of specified minimum width, together with required planting and landscaping consisting of native vegetation or other species included on an approved species list used to visibly separate one use from another, or to shield or block noise, lights, or other nuisances. A bufferyard may also contain a barrier such as a berm, wall, or fence, designed to provide screening.

Bug type bulb means any yellow colored incandescent light bulb, not to exceed 25 watts, that is marketed as being specifically treated in such a way so as to reduce the attraction of bugs to the light.

Buildable acre means the upland portion of a parcel that is not required open space required by section 130-157. *Also see "net buildable area."*

Buildable lot means a duly recorded lot as shown on a plat approved by the county that complies with each and every requirement of the Land Development Code.

Buildable parcel means a parcel of land, including but not limited to a buildable lot, that complies with each and every requirement of this Land Development Code.

Building means a structure that is located on land or water and which can be used for housing, business, commercial, agricultural, storage or office purposes, either temporarily or permanently. Buildings are used or intended for supporting or sheltering any use or occupancy.

Building code means the Florida Building Code as applied to the county.

Building permit means a development permit pursuant to this Land Development Code, Chapter 6 of the Code of Ordinances and/or the Florida Building Code.

Buttonwood association. See "Salt marsh and buttonwood associations."

Cactus hammock means a low hammock with understories and/or ground covers with an abundance of cacti of the genera Opuntia, Acanthocereus, Pilosocereus and Harrisia. Common species in cactus hammocks include Barbed Wire Cactus (Acanthocereus tetragonus), Prickly Pear Cactus (Opuntia stricta). Rare species include Tree Cactus (Pilosocereus robinii) and Prickly Apple Cactus (Harrisia fragrans).

Campground space means a space, whether improved or unimproved, used for tent camping, including pop-ups, for tenancies of less than six months.

Canal means a manmade trench, the bottom of which is normally covered by water with the upper edges of its sides normally above water.

Canopy trees means tall trees that form the uppermost leaves or needles in a hammock or pineland area as may be required in landscaping by this land development code.

Capacity means the capability of a facility to serve the needs of a user such as the number of vehicles a road can safely and efficiently carry.

Capital improvements means the planning of, engineering for, acquisition of land or equipment for, and the construction of improvements, including, but not limited to, road, park, solid waste, water, wastewater treatment facilities and systems, library, public buildings and emergency services, and police facilities, but does not include routine maintenance.

Channel means a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

Clearing means the clearing of land, including clearing or removal of vegetation, and including any significant disturbances of vegetation or substrate (soil) manipulation. Clearing is defined as a development activity.

Coastal Barrier Resources System (CBRS) means those 15 CBRS system units, designated under the federal Coastal Barrier Resources Act (CBRA) of 1982, excluding otherwise protected areas (OPAs), in the county, , comprising relatively undeveloped coastal barriers and all associated aquatic habitats including wetlands, marshes, estuaries, inlets and near shore waters. System units are generally comprised of lands that were relatively undeveloped at the time of their designation within the CBRS. The boundaries of these units are designated by the U.S. Department of the Interior and the boundaries are generally intended to follow geomorphic, development, or cultural features. Most new federal expenditures and financial assistance, including flood insurance, are restricted within system units. System units are identified and depicted on the current flood insurance rate maps approved by the Federal Emergency Management Agency. Only the United States Congress can revise CBRS boundaries. (Federal law limits new federal expenditures but does not control State, local or private expenditures.)

Coastal high-hazard area (CHHA) means the area below the elevation of the Category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model.

Commencement of construction means the first placement of permanent evidence of a structure on a site pursuant to a duly issued building permit, such as the pouring of slabs or footings or any work beyond the state of excavation, including the relocation of the structure. Permanent construction does not include the installation of streets or sidewalks within the right of way.

Commercial apartment means an attached or detached residential dwelling unit located on the same parcel of land as a nonresidential use that is intended to serve as permanent housing for the owner or employees of that nonresidential use. The term does not include a tourist housing use or vacation rental use.

Commercial fishing use means the catching, landing, processing and/or packaging of seafood for commercial purposes; the storage, mooring and docking of commercial fishing vessels; and/or the manufacture, assembly, repair, maintenance and storage of traps and other commercial fishing equipment; and the term includes charter boat uses and sport diving uses.

Commercial recreation use, indoors, means a use designed and equipped for the conduct of sports and leisure-time activities operated as a business and providing completely enclosed recreation activities. This definition includes, but is not limited to, indoor activities including and related to bowling, athletic courts, miniature golf, theaters, firearm and archery shooting ranges, health and fitness clubs and swimming pools.

Commercial recreation use, outdoors, means a use designed and equipped for the conduct of sports and leisure-time activities operated as a business in outdoor areas. This definition includes, but is not limited to, outdoor activities including and related to athletic courts, miniature golf, golf courses and driving ranges, firearm and archery shooting ranges and swimming pools.

Commercial retail use means a use providing primarily for the sale of consumer goods, products, merchandise or services at retail. Commercial retail uses are subdivided into the following intensity classifications:

(1) *Commercial retail low-intensity* means commercial retail uses that generate less than 50 average daily trips per 1,000 square feet of floor area.
(2) *Commercial retail medium-intensity* means retail uses that generate between 50 and 100 average daily trips per 1,000 square feet of floor area.
(3) *Commercial retail high-intensity* means retail uses that generate above 100 average daily trips per 1,000 square feet of floor area.

Commercially exploited means native plants so designated by the Florida Department of Agriculture as listed in the Preservation of Native Flora of Florida Act, F.S. sections 581.185-581.187.

Community center means a defined geographic development focal area as identified within each of the Livable CommuniKeys Plans.

Community character means the image and perception of a community as defined by the recognizable natural and built landmarks, boundaries and features that provide a sense of place and orientation and the interrelationship of all these characteristics.

Community Impact Statement. See Chapter 110, Article III. Conditional Uses for requirements.

Comprehensive Plan means the compilation of goals, objectives, policies, and maps for the physical, social, and economic development within the County, adopted by ordinance pursuant to Chapter 163, Part II, Florida Statutes, as amended and containing all statutorily-required elements.

Concept Meeting means a meeting a private applicant must attend with the Planning and Environmental Resources Department with the submission of an application for amendment to the text of the Land Development Code and/or Comprehensive Plan to explain and identify county-wide policy impacts for the Board of County Commissioners and the public.
Concurrency means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.

Conditional Use Permit (major or minor) means a development approval as defined in Chapter 110, Article III. Conditional Uses.

Connection means a driveway, turnout or other means of providing movement of vehicles to or from roads.

Conservation land protection area means areas that have been identified by the county in management plans for resource protection that are inside or adjacent to existing state and federal park and conservation land boundaries.

Construction impact zone means the area to be deducted from the buildable area of a parcel in order to allow for clear working area during construction activities and which shall include a perimeter of at least five feet around the proposed structure as measured from the drip line or the outermost point of the structure.

Construction, relative to stormwater management, means any on-site activity that will result in the change of natural drainage patterns and will require the creation of a new stormwater management system.

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

Control elevation means the lowest point above sea level at which water can be released through the control structure.

Corner lot means a parcel of land where the frontages are intersecting at an angle created by two or more roads resulting in a Double Frontage parcel as set forth in Section 131-3(c)(2).

County means unincorporated Monroe County, Florida.

Cumulatively illuminated means illuminated by numerous artificial light sources that as a group illuminate any portion of the beach.

Decision height means the height at which a decision must be made, during ILS instrument approach, to either continue the approach or to execute a missed approach.

Density, allocated means the number of dwelling units or rooms/spaces which may be permitted to be developed per gross acre of upland without the use of Transferable Development Rights (TDRs).

Density, maximum net means the maximum number of dwelling units or rooms/spaces which may be permitted to be developed per buildable acre, with the use of Transferable Development Rights (TDRs) or for affordable housing.

Detention means the temporary delay of stormwater runoff by a structure, for water quantity and quality improvements, prior to discharge into receiving waters.

Developed Area means an area where significant site improvements, such as utility installations, paving, and/or the construction of one or more structures, have occurred.

Developer means any person, including a governmental agency, undertaking any development.

Development means the carrying out of any building activity, the making of any material change in the use or appearance of any structure on land or water, or the subdividing of land into two or more parcels.

(1) Except as provided in subsection (3) of this definition, for the purposes of this chapter, the following activities or uses shall be taken to involve "development":
   a. A reconstruction, alteration of the size, or material change in the external appearance of a structure on land or water;
   b. A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;
   c. Alteration of a shore or bank of a seacoast, lake, pond or canal, including any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes;
   d. Commencement of drilling (except to obtain soil samples), mining or excavation on a parcel of land;
   e. Demolition of a structure;
   f. Clearing of land, including clearing or removal of vegetation and, including significant disturbance of vegetation or substrate (soil) manipulation, including the trimming of mangroves to the extent allowed by law; and
   g. Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(2) The term "development" includes all other activity customarily associated with it. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development.

Reference to particular operations is not intended to limit the generality of this definition.

(3) For the purpose of this chapter, the following operations or uses shall not be taken to involve "development":

a. Work involving the maintenance, renewal, improvement or alteration of any structure, if the work affects only the color or decoration of the exterior of the structure or interior alterations that do not change the use for which the structure was constructed;

b. Work involving the maintenance of existing landscaped areas and existing rights-of-way such as yards and other nonnatural planting areas;

c. A change in use of land or structure from a use within a specified category of use to another use in the same category unless the change involves a change from a use permitted as of right to one permitted as a minor or major conditional use or from a minor to a major conditional use;

d. A change in the ownership or form of ownership of any parcel or structure;

e. The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land unless otherwise specifically required by law; or

f. The clearing of survey cuts or other paths of less than four feet in width and the mowing of vacant lots in improved subdivisions and areas that have been continuously maintained in a mowed state prior to the effective date of the plan, the trimming of trees and shrubs and gardening in areas of developed parcels that are not required open space and the maintenance of public rights-of-way and private accessways existing on the effective date of the ordinance from which this chapter is derived or approved private rights-of-way.

(4) The term "development" also means the tourist housing use or vacation rental use of a dwelling unit, or a change to such a use (i.e., conversion of existing dwelling units to vacation rental use). Vacation rental use of a dwelling unit requires building permits, inspections and a certificate of occupancy.

Development, utility work means work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners. The listed operations or uses shall not be taken for the purpose of this section to involve “development.”

Development order means any order granting, denying, or granting with conditions an application for a development permit.

Development permit means any building permit, plat approval, conditional use permit, subdivision approval, rezoning, variance, special exception, or any other official action of Monroe County having the effect of permitting the development of land.

Diameter at breast height (DBH) means tree trunk diameter measured at approximately four and one half (4.5) feet above the surrounding grade.

Discharge, direct, means the release of stormwater through a control structure to the receiving water body.

Discharge structure means a device through or over which water is released from a stormwater management structure.

Disturbed land means land that manifests signs of environmental disturbance that has had an observable effect on the structure and function of the natural community.

Disturbed salt marsh and buttonwood wetlands means salt marsh or buttonwood wetland habitat with environmental disturbance that has had an observable effect on the structure and function of the natural community.

Dock means a fixed or floating structure built and used for the landing, berthing, and/or securing of vessels or watercraft either temporarily or indefinitely. For the purposes of this land development code, docks shall not include "water access walkways".

Docking facilities means structures used for the landing, berthing, and/or securing of vessels including, but are not limited to, docks, wharves, piers, quays, slips, basins, posts, cleats, davits, piles or any other appurtenances or attachment thereto.

Double frontage means a parcel of land having frontage on two or more roads, including, but not limited to through lots and corner lots.

Drain means a channel, pipe or duct for conveying water.

Drainage means removal of water from an area to lower the water level of that area.

Drainage basin means a catchment area that is otherwise draining to a watercourse or contributing flow to a body of water.

Drainage facilities means a system of man-made structures designed to collect, convey, hold, divert, or discharge stormwater, and includes stormwater sewer, canals, detention structures, and retention structures.

Dredging means excavation below water level or in wetlands.

Dry detention means the delay of stormwater runoff prior to discharge into receiving waters in a structure with a bottom elevation above the water table or control elevation.

Dry retention means the prevention of stormwater runoff from direct discharge into receiving waters in a structure with a bottom elevation above the water table or control elevation.

Ductless air conditioning means a system used to cool a structure that does not require duct work and consists of two separate components: an outdoor condenser, and an indoor evaporator (does not include a window air conditioner which is self-contained, or one piece).

Dune means a mound, bluff, or ridge of loose sediment, usually sand-sized sediment, lying landward of the beach and deposited by any wind or ocean current or artificial mechanism.

Dwelling, attached, means a dwelling unit c developed without open yards on all sides of the dwelling unit

Dwelling, commercial apartment, means a dwelling unit located on the same parcel of land as a nonresidential use that is intended to serve as permanent housing for the owner or employees of that nonresidential use, such as apartments that are built as a part of a commercial or office use.

Dwelling, detached, means an individual dwelling unit that is developed with open yards on all sides of the dwelling unit. The term includes single family residences but does not include mobile homes or recreational vehicles.

Dwelling, single-family, or *single-family residence* means a one-family dwelling unit that is developed with open yards on all sides of the building.

Dwelling unit means one or more rooms physically arranged for occupancy by one residential household sharing common living, cooking, and toilet facilities.

Easement means a grant of one or more of the property rights by the property owner to and/or for the use by the public, the County, a public or private utility, a corporation, or another person or entity.

Element means a major division or chapter of the comprehensive plan.

Employee housing. See "Affordable housing."

Employer-owned rental housing. See "Affordable housing."

Environmentally sensitive lands means areas of native habitat requiring special management attention to protect important fish and wildlife resources and other natural systems or processes. Environmentally sensitive lands typically include wetlands and other surface waters, tropical hardwood hammocks and pinelands.

Erosion means the washing away or scouring of soil by water or wind action.

Exceptional hardship means a burden on a property owner that substantially differs in kind or magnitude from the burden imposed on other similarly situated property owners. Financial difficulty/hardship does not qualify as exceptional hardship.

Existing means the condition immediately before development or redevelopment occurs.

Existing conditions map means the official map of existing conditions as adopted pursuant to section 130-4 of these regulations which reflect vegetation, natural features and developed lands in the county as modified by development authorized by section 101-4(b).

Expansion of Nonconforming Use means extending a nonconforming use to occupy a greater amount of area beyond that which it occupied on the date the use became nonconforming.

Family means a person living alone, or people living together as a single household and sharing common living, cooking, and toilet facilities:

(1) Any number of people related by blood, marriage, adoption, guardianship, domestic partnership or duly-authorized custodial relationship;
(2) Three unrelated people;
(3) Two unrelated people and any children related to either of them.

Fence means a barrier made of rocks, logs, posts, boards, wire, stakes, rails, masonry components, or similar material or combination of materials.

Fill means material, consolidated or unconsolidated deposited on land or in water.

Fish house means a commercial retail establishment that buys and sells, at wholesale and/or retail, seafood products, bait, ice, fuel, and other products and services required by the commercial fishing industry.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas resulting from the overflow of tidal waters or the unusual and rapid accumulation of stormwater runoff of waters from any surface.

Flood insurance rate map or *FIRM* means the official map of the county on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the county.

Floodplain means any land area susceptible to being inundated by flood waters from any source. (FEMA definition)

Floor means the top surface of an enclosed area in a building (including basement), i.e., the top of the slab in concrete slab construction or the top of the wood flooring in wood frame construction. The term does not include the floor of an area used exclusively for parking of

vehicles (i.e., garage), limited storage, or building access (i.e., stairs, elevator shafts, maintenance crawl space).

Floor area means the sum of the gross covered and enclosed habitable areas of a building or any other covered and enclosed structure, measured from the exterior walls or from the centerline of party walls.

Floor area ratio (FAR) means the total floor area of the building(s) and/or any other covered and enclosed structure(s) on a site divided by the gross area of the site. FAR is the measurement of the intensity of building development on a site.

Frequency means the anticipated cyclic return period of a storm event, e.g., 25-year storm.

Freshwater lens means a freshwater aquifer at the top of the water table overlying a saline aquifer.

Freshwater wetlands means wetland areas with either standing water or saturated soil, or both, where the water is fresh or brackish. The vegetation common in freshwater wetlands in the Florida Keys may include the following species:

Common Name	**Scientific Name/Species**
Saw grass	*Cladium jamaicensis*
Buttonwood	*Conocarpus erectus*
Spike rush	*Eleocharis celluosa*
White mangrove	*Lagungularia racemosa*
Red mangrove	*Rhizophora mangle*
Cattail	*Typha spp.*

Frontage means that part of a parcel of land abutting on a road.

Functional integrity means the completeness and natural stability of an assemblage of native plants and animals as indicated by measures of continuity, species diversity, species interdependence and biomass.

Future Land Use Map (FLUM) means a graphic representation of the land use categories used in the County and their placement on the land adopted as part of the comprehensive plan and used as the regulatory map for implementation of the comprehensive plan and land development regulations.

Governmental agency means:

(1) The United States or any department, commission, agency or other instrumentality thereof;
(2) The state or any department, commission, agency or other instrumentality thereof;

(3) Any local government or any department, commission, agency or other instrumentality thereof; or
(4) Any school board or other special district, authority or governmental entity.

Grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure, or the crown or curb of the nearest road directly adjacent to the structure, whichever is higher. To confirm the natural elevation of the ground surface, prior to construction, the county shall utilize the Light Detection and Ranging (LiDAR) dataset for Monroe County prepared in 2007 and other best available data, including, but not limited to, pre-construction boundary surveys with elevations, pre-construction topographic surveys, elevation certificates and/or other optical remote sensing data.

Gray water reuse mean reusing wastewater from residential, commercial and industrial bathroom sinks, bath tub shower drains, and clothes washing equipment drains for reuse onsite, typically for toilet flushing.

Gross acre means the total area of a site excluding submerged lands, tidally inundated mangroves below the mean high water line, and any dedicated public rights-of-way.

Gross area means the total gross acres of a site, less submerged lands, tidally inundated mangroves below the mean high water line, and any dedicated public rights-of-way.

Groundwater means water beneath the surface of the ground.

Habitable floor area means any floor area for occupancy and equipped for uses including, but not limited to, kitchen, dining, living, family or recreation room, laundry, bedroom, bathroom, office, workshop, professional studio or commercial occupancy.

Habitable space means any structure equipped for human habitation such as, but not limited to, office, workshop, kitchen, dining, living, laundry, bathroom, bedroom, den, family or recreational room; professional studio or commercial occupancy including all interior hallways, corridors, stairways and foyers connecting these areas. Garages, exterior stairs and open decks and patios are not considered habitable structures.

Heavy industrial use. See "*Industrial use, heavy.*"

Height means "the vertical distance between grade and the highest part of any structure, including mechanical equipment, but excluding the following: chimneys; spires and/or steeples on structures used for institutional and/or public uses only; radio and/or television antenna, flagpoles; solar apparatus; utility poles and/or transmission towers; and certain antenna supporting structures with attached antenna and/or collocations as permitted in Chapter 146. However, in no event shall any of the exclusions enumerated in this definition be construed to permit any habitable or usable space to exceed the applicable height limitations. In the case of

airport districts, the height limitations therein shall be absolute and the exclusions enumerated in this definition shall not apply.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

High hammock means an upland, hardwood forest community in which the following species of plants represent a component of the flora:

Common Name	**Scientific Name/Species**
Crabwood	*Gymnanthes lucida*
Gumbo limbo	*Bursera simaruba*
Pale lidflower	*Calyptranthes pallens*
Soldierwood	*Colubrina elliptica*
Guiana plum	*Drypetes lateriflora*
Redberry stopper	*Eugenia confuse*
Red stopper	*Eugenia rhombea*
Princewood	*Exostema caribaeum*
Inkwood	*Exothea paniculata*
Strangler fig	*Ficus aurea*
Short-leaf fig	*Ficus citrifolia*
Everglades velvetseed	*Guettarda elliptica*
Rough velvetseed	*Guettarda scabra*
Scarletbush	*Hamelia patens*
White ironwood	*Hypelate trifoliata*
Black ironwood	*Krugiodendron ferreum*
Wild bamboo, smallcane	*Lasiacis divaricata*
Wild tamarind	*Lysiloma latisiliquum*
Mastic	*Sideroxylon foetidissimum*
Lancewood	*Ocotea coriacea*
Bahama Wild coffee	*Psychotria ligustrifolia*
Wild coffee	*Psychotria nervosa*
Paradise tree	*Simarouba glauca*
West Indies trema	*Trema lamarckiana*
Florida trema	*Trema micrantha*

Historic, cultural or archaeological landmark means a structure, district, or site designated by BOCC Resolution as a historically, architecturally, or archaeologically significant landmark on the Florida Keys Historic Register.

Home occupation means a business, profession, occupation or trade operated from and/or conducted within a dwelling unit (or within an accessory structure thereto) for gain or support by a resident of the dwelling unit.

Hotel means a building containing individual units for the purpose of providing overnight lodging facilities for periods not exceeding 30 days to the general public for compensation with or without meals, and which has common facilities for reservations and cleaning services, combined utilities and on-site management and reception.

Household means all the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

Hydrograph means a graph of flow rate of discharge.

Immediate Vicinity means a distance of less than 5 miles.

Impact fee means charges assessed against new development or redevelopment which partially or wholly cover the cost of providing capital facilities needed to serve the development.

Impervious surface means a surface that does not allow, or minimally allows, the penetration of water; examples include building roofs, concrete and asphalt pavements, set pavers, and some fine-grained soils, such as clays.

Indirect discharge means release of stormwater from a system by means other than a control structure, e.g. spreader swale, sheet flow.

Indirectly illuminated means illuminated as a result of the glowing elements, lamps, globes, or reflectors of an artificial light source, which source is not directly visible to an observer on the beach.

Industrial use, heavy means an industrial use with greater than average impacts on the environment and community and that is characterized by significant impacts on adjacent uses in terms of noise, hazards, emissions and/or odors, including but not limited to junkyards, salvage yards, solid waste disposal facilities/waste transfer stations, bulk petroleum storage, permanent concrete manufacturing facilities/concrete batch plants and resource extraction.

Industrial use, light means a use devoted to the manufacture, warehousing, assembly, packaging, processing, fabrication, indoor and outdoor storage, or distribution of goods and materials whether new or used and/or the substantial refinishing, repair and/or rebuilding of vehicles or vessels.

Institutional-residential use means temporary or permanent housing associated with an institutional organization, such as a group home, foster care facility, convent, nursing facility, student housing, life care/elderly housing, or educational and/or scientific research facility.

Institutional use means a use that serves the religious, educational, cultural, scientific, research, social service, or health needs of the community, including but not limited to, educational and scientific research facilities that serve the region and day care and preschool facilities.

Intensity means an objective measurement of the magnitude of nonresidential use on a site. Intensity is measured and expressed as a floor area ratio (FAR) (see definition of *Floor Area Ratio*).

Invasive exotic plant species means any plant species on the most recent Florida Exotic Pest Plant Council's list of category I or II invasive exotic plant species and/or the Florida Keys Invasive Exotics Task Force lists of invasive exotic plant species, as determined and interpreted by the County Biologist.

Jurisdictional boundaries, sea turtle protection, means the area on contiguous land within 300 feet of an identified or potential nesting area.

Keys Wetland Evaluation Procedure (KEYWEP) means a specific wetlands evaluation procedure developed for wetlands in the Florida Keys, developed as part of the Advanced Identification of Wetlands Program.

Land means the earth, at or below the surface that lies above high tide for lands subject to tidal inundation and mean high water for freshwater bodies of water.

Land Development Code (LDC) means ordinances enacted by the County for the regulation of any aspect of development as defined herein.

Land use means any use associated with development on land.

Level of service means an indicator or the extent or degree of service provided by, or proposed to be provided by a facility based on and related to the operational characteristics of the facility. Level of service indicates the capacity per unit of demand for each public facility.

Light industrial use. See "*Industrial use, light*."

Live-aboard vessel, as defined in F.S. section 327.02, means a) any vessel used solely as a residence and not for navigation; b) any vessel represented as a place of business or a professional or other commercial enterprise; or c) any vessel for which a declaration of domicile has been filed pursuant to F.S. section 222.17. A commercial fishing boat is expressly excluded from the term *live-aboard vessel*.

Local planning agency means the agency designated to prepare and review the comprehensive plan. In the county, the local planning agency is the planning commission.

Local road means a road designated and maintained primarily to provide access to abutting property. A local road is of limited continuity and is not for through traffic. A local road is not considered as part of the major road network system.

Lot means a duly recorded lot as shown on a plat approved by the County. (Also described as platted lot.)

Lowest floor means the lowest enclosed area (including basement) of a structure. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered the building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of chapter 122.

Low hammock means an upland hardwood forest community in which the following species of plants represent a major component of the flora:

Common Name	**Scientific Name/Species**
Chaff flower	*Alternanthera ramosissima*
Saffron plum	*Sideroxylon celastrinum*
Limber caper	*Capparis flexuosa*
Seven-year apple	*Genipa clusiifolia*
Seagrape	*Coccoloba uvifera*
Buttonwood	*Conocarpus erectus*
Rhacoma	*Crossopetalum rhacoma*
Black torch	*Erithalis fruticosa*
Golden creeper	*Ernodea littoralis*
Spanish stopper	*Eugenia foetida*
Blolly	*Guapira discolor*
Joewood	*Jacquinia keyensis*
Wild dilly	*Manilkara jaimiqui sub. emarginata*
Cactus	*Opuntia spp.*
Darling plum	*Reynosia septentrionalis*
Keys thatch palm	*Leucothrinax morrisii*
Florida thatch palm	*Thrinax radiata*
Hog plum	*Ximenia americana*

Maintenance means that action taken to restore or preserve the functional intent of any facility or system.

Maintenance dredging means the removal of shoaling and/or sedimentation in channels, basins, canals, and harbors necessary to return such areas to their previous configurations, dimensions and depths. Maintenance dredging is subject to specific conditions and limitations (e.g., natural resource restrictions and dredged spoil disposal methods).

Major street means U.S. 1, 905, and 940 (Key Deer Boulevard) for the purposes of chapter 114, article V.

Mangrove community means a wetland plant association subject to tidal influence where the vegetation is dominated by one more of the following three species of mangroves:

Common Name	**Scientific Name/Species**
Black mangrove	*Avicennia germitiatis*
White mangrove	*Laguncularia racemosa*
Red mangrove	*Rhizophora mangle*

Manmade water body means a water body that was created by excavation by mechanical means under human control and shall include a canal, cut basin or channel where its edges or margins have subsequently been modified by natural forces.

Mariculture means a specialized branch of aquaculture involving the cultivation of marine organisms for food and other products.

Marina means a facility for the storage, launching and securing of vessels and/or live-aboard vessels, together with accessory retail and/or service uses, including but not limited to commercial retail, restaurants, vessel rentals, charter vessels, vessel repair, sport diving operations and the provision of fuel, The term marina does not include docks accessory to a land-based dwelling unit limited to the use of owners or occupants of the dwelling unit.

Marine facility means a docking facility with ten slips or more, or one live-aboard slip.

Market rate housing means an attached or detached dwelling unit that is intended to serve as permanent housing for households not eligible for affordable or employee housing under this Land Development Code.

Master planned community means any master planned community subject to a master plan or other development order approved by the county where public access is restricted and the community is operated and maintained by the community including the provision of comprehensive, private utilities and transportation facilities and services within its boundaries and a homeowners association or similar entity which regulates development standards and monitors development requests by its members.

Maximum sales price, owner occupied affordable housing unit, means a price not exceeding 3.75 times the annual median household income for the county for a one bedroom or efficiency unit, 4.25 times the annual median household income for the county for a two bedroom unit, and 4.75 times the annual median household income for the county for a three or more bedroom unit.

Maximum net density. See "Density, maximum net."

Mean high water line or *mean high tide (MHW)* means the point to which water extends onto the shoreline at average daily high tide as indicated by physical evidence on site such as discoloration, vegetative indicators or wrack lines pursuant to F.S. Chapter 177 Part II, Coastal Mapping Act.

Mean low water line or *mean low tide (MLW)* means the point to which water extends onto a shoreline at average daily low tide as indicated by physical evidence on site such as discoloration, or vegetative indicators pursuant to F.S. Chapter 177 Part II, Coastal Mapping Act.

Mean sea level (MSL) means the average height of the sea for all stages of the tide. For the purposes of this Land Development Code, the term is synonymous with National Geodetic Vertical Datum (NGVD).

Median annual household income means the median of annual household income (per household size) as published for the county on an annual basis by the U.S. Department of Housing and Urban Development.

Military facility means a use devoted to one of the armed services of the United States.

Minimum descent altitude means the lowest altitude, expressed in feet above mean sea level (MSL), to which descent is authorized on final approach or during circle-to-land maneuvering in execution of a standard instrument approach procedure, where no electronic glide slope is provided.

Mitigation (as related to natural resources) means enhancement, restoration, creation and/or preservation that serves to offset unavoidable impacts associated with development. As specified in Section 118-8, mitigation shall require payment to the Monroe County Environmental Land Management and Restoration Fund.

Mobile Vendor Food Unit means a non-motorized food vendor cart, which is small, lightweight, and often mounted on a single-axle (two-wheeled) chassis; or a vehicle-mounted food service establishment which is either self-propelled and licensed to travel on public streets, or not self-propelled but is a licensed trailer which can be moved from place to place.

Mobile home means a structure transportable in one or more sections which structure is eight body feet or more in width and over 35 feet in length, which structure is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein, including expandable recreational vehicles, known as "park models" designed and built as a permanent residence, the structure for which is 35 feet or less in length and in excess of eight feet in width.

Mobile home park means a place set aside and offered by a person or public body for either direct or indirect remuneration of the owner, lessor or operator of such place for the parking or accommodation of six or more mobile homes.

Modular home means a structure intended for residential use that is manufactured off-site in accordance with state standards.

Monroe County Comprehensive Plan means the Monroe County Comprehensive Plan adopted and amended pursuant to the Community Planning Act, F.S. § 163.3161 et seq.

Monument means an object recognizing persons or points of historic, educational or archaeological interest, owned and operated by a nonprofit, publicly supported organization.

Mooring Facilities means a structure built and used for the mooring of vessels or watercraft.

Mooring field. See "*Mooring Field*" in Section 26-1, of the Monroe County Code of Ordinances.

Multifamily residential development means a type of residential housing where multiple separate dwelling units for residential inhabitants are contained within one building or several buildings within one complex.

National Geodetic Vertical Datum (NGVD) is a vertical control, as corrected in 1929, used as a reference for establishing varying elevations within the floodplain.

Native Upland Vegetation/Habitat (also *Upland Native Vegetation/Habitat*) means native plant species, either new growth or mature, occurring within native upland plant communities including pinelands, cactus hammocks, palm hammocks or tropical hardwood hammocks. Within pineland habitats, the dominant canopy consists of slash pines (Pinus elliottii var. densa). Many of the species include:

Common Name	**Scientific Name/Species**	**Habitat**
Bahama Nightshade	*Solanum bahamense*	Hardwood Hammock
Big Pine partridge pea; Florida Keys senna; key cassia	*Cassia keyensis*	Pinelands
Black Bead	*Pithecellobium guadalupense*	Hardwood Hammock
Black Ironwood	*Krugiodendron ferreum*	Hardwood Hammock
Black Torch	*Erithalis fruticosa*	Hardwood Hammock

Common Name	**Scientific Name/Species**	**Habitat**
Blodgett's silverbush	*Argythamnia blodgettii*	Pinelands
Buttonwood	*Conocarpus erectus*	Hardwood Hammock
Cockspur	*Pisonia rotundata*	Hardwood Hammock
Crabwood	*Ateramnus lucidus*	Hardwood Hammock
Darling Plum	*Reynosia septentrionalis*	Hardwood Hammock
Everglades Velvetseed	*Guettarda elliptica*	Hardwood Hammock
Florida five-petalled leafflower	*Phyllanthus pentaphyllys* var. *floridanus*	Pinelands
Florida Keys noseburn	*Tragia saxicola*	Pinelands
Florida Keys wedge sandmat	*Chamaesyce deltoidea* var. *serpyllum*	Pinelands
Garber’s spurge; Garber’s sandmat	*Chamaesyce garberi*	Pinelands, hammocks, sand dunes
Gumbo Limbo	*Bursera simaruba*	Hardwood Hammock
Indigo Berry	*Randia aculeata*	Hardwood Hammock
Jamaican Dogwood	*Piscidia piscipula*	Hardwood Hammock
Keys hairy-podded spurge	*Chamaesyce porteriana* var. *keyensis*	Pinelands, sand dunes
Lancewood	*Nectandrea coriacea*	Hardwood Hammock
Limber Caper	*Capparis flexuosa*	Hardwood Hammock
Locustberry	*Brysonima cuneata*	Hardwood Hammock
Long Stalked Stopper	*Psidium longipes*	Hardwood Hammock
Mahogany	*Swietenia mahogoni*	Hardwood Hammock

Common Name	**Scientific Name/Species**	**Habitat**
Maidenbush	*Savia bahamensis*	Hardwood Hammock
Marlberry	*Ardisia escallanioides*	Hardwood Hammock
Milkbark	*Drypetes diversifolia*	Hardwood Hammock
Myrsine	*Myrsine floridana*	Hardwood Hammock
Pigeon Plum	*Coccoloba diversifolia*	Hardwood Hammock
Poisonwood	*Metopium toxiferum*	Hardwood Hammock
Porter's spurge	*Chamaesyce porteriana* var. *scoparia*	Pinelands
Saffron Plum	*Bumelia celastrina*	Hardwood Hammock
Sand croton	*Croton arenicola*	Pinelands, sand dunes
Sand flax	*Linum arenicola*	Pinelands
Silky bluestem	*Schizachyrium sericatum*	Pinelands
Silver dwarf morning-glory	*Evolvulus sericeus* var. *averyi*	Pinelands
Small-leaf squarestem	*Melanthera parvifolia*	Pinelands
Snowberry	*Chiococca alba*	Hardwood Hammock
Spanish Stopper	*Eugenia foetida*	Hardwood Hammock
Spicewood	*Calyptranthes pallens*	Hardwood Hammock
Tallowwood	*Ximenia americana*	Hardwood Hammock
Tenlobe false foxglove	*Gerardia keyensis (Agalinis)*	Pinelands
Torchwood	*Amyris elemifera*	Hardwood Hammock
White Stopper	*Eugenia axillaris*	Hardwood Hammock
Wild Cinnamon	*Canella winterana*	Hardwood Hammock

Common Name	**Scientific Name/Species**	**Habitat**
Wild Coffee	*Psychotria nervosa*	Hardwood Hammock
Wild Dilly	*Manilkara bahamensis*	Hardwood Hammock
Wild Lantana	*Lantana involucrata*	Hardwood Hammock
Wild Lime	*Zanthoxylum fagara*	Hardwood Hammock
Wild Tamarind	*Lysiloma latisiliquum*	Hardwood Hammock
Willow Bustic	*Bumelia salicifolia*	Hardwood Hammock

Natural resources means the air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other environmental resources.

Net buildable area means that portion of a parcel of land that is developable and is not required open space. .

Nesting Areas (for birds) means those areas that birds use for nesting.

Nesting area (*for sea turtles*) means both identified nesting areas and potential nesting areas.

Nesting area, identified, (*for sea turtles*) means any area where sea turtles have been or are currently nesting, and the adjacent beach or other intertidal areas used for access by the turtles.

Nesting area, potential, (*for sea turtles*) means any area where sea turtle crawls have been observed and documented.

Nesting season (*for sea turtles*) means the period from April 15 through October 31 of each year.

Newspaper of general circulation means a newspaper of local origin published at least on a weekly basis, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or newspaper that is given away primarily to distribute advertising.

Non-commencement means the cancellation of construction activity, making a material change in a structure, or the cancellation of any other land development activity making a material change in the use or appearance of land.

Nonconforming sign means a lawfully permitted sign (including a sign for which a variance has been granted) existing as of September 15, 1986, but which does not comply with the requirements of Chapter 142 or any amendments thereto.

Nonconforming structure means a structure which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or this LDC.

Nonconforming structure, lawful means a structure which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or this LDC, but was permitted, or otherwise in existence lawfully, prior to the effective date of the ordinance adopting the current provision or regulation that rendered the structure nonconforming.

Nonconforming use means a use which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or LDC.

Nonconforming use, lawful means a use which does not conform to a current provision or regulation provided in the Comprehensive Plan and/or LDC, but was permitted, or otherwise in existence lawfully, prior to the effective date of the ordinance adopting the current provision or regulation that rendered the use nonconforming.

Non-waterfront lot or parcel means a lot or parcel of land that does not contain a shoreline.

Office use means a use where business, professional or governmental services are made available to the public. The term excludes an office(s) ancillary to the operation of another defined land use (i.e. commercial retail) on the site.

Open Space means (in relation to open space ratio calculations) that portion of any parcel or area of land or water that is required to be maintained such that the area within its boundaries is open and unobstructed from the ground to the sky (This definition is not intended to exclude vegetation from required open space).

Open space ratio (OSR) means the percentage of the total gross area of a parcel that is open space.

Operational entity means an acceptable, legally bound, responsible organization that agrees to operate and maintain the surface water management system.

Ordinance means any ordinance of the county and all amendments thereto.

Outdoor lighting means any light source that is installed or mounted outside of a building, including street lights.

Outdoor retail sales means a type of commercial retail use, as defined in this section, that involves the display and sale of vehicles, recreational vehicles, boats, equipment, goods, and/or materials outside of a building.

Owner means any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety with legal or beneficial title to the whole or to part of a building or land.

Palm hammock means a low hammock where one out of every five of the dominant canopy plants is a native palm characterized by the state thatch palm, Thrinax radiata.

Parcel means any quantity of land and water capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit, or which has been used or developed as a unit.

Park means an active or passive recreational facility operated for the benefit of the general public by a public or quasi-public agency.

Permanent residential unit means a dwelling unit that is designed for, and capable of, serving as a residence for a household for non-transient occupancy, excluding hotel, motel, and recreational vehicle.

Permeable (pervious) paving means a range of sustainable materials and techniques with a base and subbase that allow the movement of stormwater through the surface.

Pineland means an upland forest community with an open canopy dominated by the native slash pine, Pinus elliottti var. densa. Plant species that are commonly present include, but are not limited to:

Common Name	**Scientific Name/Species**
Christmas berry	*Crossopetalum ilicifolium*
Indian grass	*Sorghastrum secundum*
Keys thatch palm	*Leucothrinax morrisii*
Locust berry	*Byrsonima cuneata*
Love vine	*Cassytha filiformis*
Pineland croton	*Croton linearis*
Saw palmetto	*Serenoa repens*
Silver palm	*Coccothrinax argentata*
Slash pine	*Pinus elliottii*
White indigo berry	*Randia aculeata*
Yellow root	*Morinda royoc*

Planning area means the planning areas described in the Comprehensive Plan.

Plat means an official subdivision approved by the County and in compliance with Chapter 177, F.S.

Platted lot means a lot that is identified on a plat that was approved by the board of county commissioners and duly recorded.

Predevelopment condition for stormwater runoff means topography, vegetation, rate, volume, direction and pollution load of surface water or groundwater flow existing immediately prior to development.

Principal use means the primary land use established on a parcel.

Private airport means an area used for landing and takeoff of aircraft that is either publicly or privately owned, and which is used primarily by the licensee but which is available for use by invitation of the licensee. Services may be provided if authorized by the Florida Department of Transportation. The term includes Sugarloaf Airport, Tavernaero Airport Park, Summerland Key Airport, Ocean Reef Airport, and any other airport or airfield to be constructed in the county that meets these requirements.

Project means improvements to a site proposed on a particular land area that may be part of a common plan of development. Improvements shall include the subdivision of land.

Project initiation means all acts antecedent to actual construction activities and includes permit applications and development.

Public access means the ability for everyone to approach, enter, exit, communicate with, or make use of a community interest.

Public airport means an area used for landing and takeoff of aircraft; is either publicly or privately owned; and which meets minimum safety and service standards and is open for use by the public. The term includes Key West International Airport, Florida Keys Marathon Airport and any other public airport or airfield to be constructed in the county that meets these requirements.

Public assembly means a type of temporary use that is attended by members of the general public, with or without an admission charge, when the duration of the event is less than seven consecutive days and/or the anticipated daily attendance is expected to exceed 250 persons.

Public uses means uses or facilities operated by a governmental agency, including publicly and privately owned utilities, that provide services to the immediate vicinity in which the use is located.

Public facilities means major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities.

Public interest means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action.

Public navigation channel means a channel that was constructed or is maintained by a public entity, such as a federal or State agency, Monroe County or other local government for the purpose of transporting people or goods for commerce, recreation or other purposes.

Rate means volume per unit of time.

Reclamation means the filling, backfilling, restructuring, reshaping, and/or revegetation within and around a land excavation or filling area to a safe and aesthetic condition.

Record drawing, stormwater management, means the system plans specifying the locations, dimensions, elevations, capacities, and capabilities of structures or facilities for controlling runoff as they have been constructed as submitted by the project contractor or engineer, as appropriate.

Recreational and Commercial Working Waterfront means a parcel or parcels of real property that provide access for water-dependent commercial activities, including hotels and motels as defined in the Florida Statutes, or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. As used in this definition, the term “vessel” has the same meaning as in the Florida Statutes. Seaports are excluded from the definition.

Recreational vehicle means the same as that term is defined in Section 320.01, F.S. The following applies to recreational vehicles in the county:

(1) Excluding temporary housing as set forth in Section 103-1, the tenancy of an occupied recreational vehicle upon a lawful recreational vehicle space shall be less than six months; and
(2) The recreational vehicle has been placed on a lawful recreational vehicle space within a recreational vehicle park, campground, or otherwise approved area, or within a storage area.
(3) The recreational vehicle has current licenses required for highway travel; and
(4) The recreational vehicle is highway ready. This means that the recreational vehicle, including any travel trailer or park trailer, is on its wheels or internal jacking system and attached to this site only by the quick disconnect-type utilities commonly used in

recreational vehicle parks and campgrounds or by security devices. No permanent additions such as state rooms shall be permitted.

Recycling is minimizing waste generation by recovering and reprocessing usable products that might otherwise become waste (i.e., recycling of aluminum cans, paper and bottles, etc.).

Redevelopment means the rehabilitation, improvement, and/or demolition and replacement of existing development on a site.

Regionally important plant species means those native plant species identified as endemic, uncommon, or rare in the county's regionally important plant species list maintained by the planning and environmental resources department or as identified by the Center for Plant Conservation, the Florida Natural Areas Inventory, or the Florida Committee on Rare and Endangered Plants and Animals.

Residence or residential use, as applied to any lot, plat, parcel, tract, area or building, means used or intended for dwelling purposes, but not including transient units.

Resource extraction, a type of heavy industrial use, means the dredging, digging, extraction, mining and quarrying of lime rock, sand, gravel or minerals for commercial purposes.

Restaurant use means any establishment, which may or may not include a drive-through service, where the principal business is the sale of food and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. Restaurant uses are subdivided into the following intensity classifications:

(1) *Low-intensity restaurant use* means a restaurant use that generates less than 50 average daily trips per 1,000 square feet of floor area.
(2) *Medium-intensity restaurant use* means a restaurant use that generates between 50 and 100 average daily trips per 1,000 square feet of floor area.
(3) *High-intensity restaurant use* means a restaurant use that generates above 100 average daily trips per 1,000 square feet of floor area.

Retention means the storage of a specific volume of stormwater runoff within a defined area having no direct discharge into receiving waters; included as examples are systems which discharge through percolation, filtered bleed-down and evaporation processes.

Right-of-way means land dedicated, deeded, used, or to be used for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies.

Rip-Rap means a permanent erosion-resistant ground cover consisting of loosely placed pieces of natural stone or clean concrete rubble, which is free of attached sediments or reinforcing rods or other similar protrusions.

Road, arterial, means a route providing service that is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance.

Road capacity means the maximum rate of flow at which vehicles can be reasonably expected to traverse a point or uniform segment of a lane or roadway during a specified time period under prevailing roadway, traffic, and control conditions, usually expressed as vehicles per hour.

Road, collector, means a route providing service that is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. Such a route also collects and distributes traffic between local roads or arterial roads and serves as a linkage between land access and mobility needs.

Road, frontage, means a public street or road auxiliary to, and located alongside, abutting and parallel to a highway for purposes of maintaining local road continuity and for control of access.

Road, local, means a route providing service that is of relatively low average traffic volume, short average trip length or minimal through-traffic movement and high land access for abutting property.

Road network system, major, means all arterial, collector and frontage roads within the county, including new arterial, collector and frontage roads necessitated by new land development activity generating traffic.

Room, hotel or *motel* means a unit consisting of a room or rooms in a public lodging establishment as defined by section 509.013(4)(a), F.S., intended for transient lodging only for periods not exceeding 30 days. Transient occupancy shall conform to the definition contained in F.S. § 509.013(12) as to transient occupancy. For the purposes of density restriction under this Land Development Code:

(1) A hotel/ motel unit may be a single bedroom and 1½ bathrooms or a hotel/motel unit may be a suite and may include a kitchenette but no more than 1½ bathrooms, one bedroom and one other living area.
(2) All entrances to a hotel/motel unit shall share the same key or means of controlling access so that the hotel or motel unit as defined herein is not divisible into separately rentable units.
(3) Suites containing more than one bedroom and 1½ baths may be constructed; however, each bedroom/full bath combination shall be considered a hotel/motel unit.

Runoff coefficient (c) means the standardized factor from which runoff can be calculated.

Runway means a defined area on an airport prepared for landing and takeoff of aircraft along its length.

Salt marsh and buttonwood wetlands.

(1) The term "salt marsh and buttonwood wetlands" means two plant associations that are sometimes collectively or individually referred to as the "transitional wetland zone." The salt marsh community is a wetland area subject to tidal influence, and the vegetation is dominated by nonwoody groundcovers and grasses. The vegetation may include, but is not limited to, the following nonwoody species:

Common Name	**Scientific Name/Species**
Dropseed	*Sporobolus virginicus*
Saltwort	*Batis maritime*
Salt grass	*Distichlis spicata*
Key grass	*Monanthochloe*
Glasswort	*Salicornia spp.*
Sea purslane	*Sesuvium portulacastrum*
Cordgrass	*Spartina spartinae*
Chestnut sedge	*Fimbristylis castanea*

(2) Woody vegetation that may be present includes the three species of mangroves, as well as buttonwood (Conocarpus erectus); however, the salt marsh community is distinguished by the dominance of nonwoody plants, and the woody species have a coverage of less than 40 percent. The salt marsh community may be associated and intermixed with areas of almost bare ground on which the vegetation may be limited to masts of periphyton.

(3) The buttonwood wetland is a wetland that is usually present in the more landward zone of the transitional wetland area, and may intermix with more upland communities. The vegetation may include, but is not limited to, the following species:

Common Name	**Scientific Name/Species**
Dropseed	*Sporobolus virginicus*
Sea oxeye daisy	*Borrichia spp.*
Saffron plum	*Bumelia celastrina*
Sea grape	*Coccoloba uvifera*
Buttonwood	*Conocarpus erectus*
Black torch	*Erithalis fruticosa*
Chestnut sedge	*Fimbristylis castanea*
Joewood	*Jacquinia keyensis*
Christmas berry	*Lycium Carolinianum*
Mayten	*Maytenus phyllanthoides*
Cordgrass	*Spartina spartinae*

(4) The buttonwood wetland is distinguished from the salt marsh wetland by the dominance of buttonwood trees, usually occurring as an open stand that permits the

growth of an understory of groundcovers and shrubs. The buttonwood wetland is, in turn, distinguished from more upland communities by the presence of graminoids and halophytic groundcovers under its open canopy, and generally by the lack of an appreciable layer of humus and leaf litter. As referenced throughout these regulations, "salt marsh and buttonwood" habitat refers collectively and individually to "salt marsh" and "buttonwood" habitats for the purpose of determining regulatory requirements.

Scarified land means an area that is cleared of native vegetation, or topographically modified such that the land is not currently in a successional sequence leading to the establishment of the vegetative communities that were cleared or disturbed.

Sea turtle means any specimen belonging to the species Caretta caretta (loggerhead turtle), Chelonia mydas (green turtle), Dermochelys coriacea (leatherback turtle), Eretmochelys imbricata (hawksbill turtle), Lepidochelys kempii (Kemp's Ridley turtle) or any other marine turtle using the county beaches as a nesting habitat.

Seasonal residential unit is a type of transient residential unit with one or more rooms, toilet facilities, and a kitchen physically arranged to create a housekeeping establishment for occupancy by one family, with tenancies not to exceed 180 consecutive days.

Sediment means solid material that subsides to the bottom of a water body.

Setback means the area between a building or structure and the property line of the parcel of land on which the building or structure is located, unoccupied and unobstructed from the ground upward, except for fences or other development permitted in the area as provided for in this Land Development Code. In measuring a setback, the horizontal distance between the property line and the furthermost projection of the building or structure shall be used. Further, the setback shall be measured at a right angle (90 degrees) from the property line.

Sewage disposal facility means any plant, system or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, and without limiting the generality of the foregoing definition shall include treatment plants, pumping stations, intercepting sewers, pressure lines, mains, and all necessary appurtenances and equipment, and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

Shopping center means a group of commercial retail and/or professional services establishments planned, developed and managed as a unit, with off-street parking provided on the property.

Shoreline means the interface between land and water, extending seaward of mean high water to include fringing mangroves and adjacent shelf and may also include a transitional zone landward of mean high water (MHW).

(1) Altered shorelines are generally located directly along dredged canals, basins and abutting channels and have been modified to such a degree that the shoreline no longer

exhibits those functions typical of natural shorelines including filtration, nutrient uptake, shoreline stabilization, storm surge abatement, and provisions of habitat for wildlife and fisheries. A shoreline is not altered unless the functional characteristics of both the transitional zone and the zone seaward of mean high water have been altered.

(2) Unaltered shorelines are generally located along natural non-dredged waterways and open water. These shorelines continue to exhibit the natural functions cited above even though fill or rip-rap may be present either above or below MHW.

Sign means any object, device, display or structure or part thereof situated outdoors or indoors that is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service event or location and by any means including words, letters, figures, designs, symbols, fixtures, colors, or projected images. Signs do not include:

(1) The flag or emblem of any nation, organization of nations, state, city, or fraternal, religious, or civic organizations;
(2) Merchandise that is not otherwise incorporated into a sign structure;
(3) Models or products incorporated in a window display;
(4) Works of art that do not contain advertising messages and in no way identify a product, use or service; or
(5) Scoreboards located on athletic fields.

Site plan means information submitted by an applicant that shall identify all development activities, including principal and accessory uses within the property boundaries.

Specimen tree means any tree with a diameter at breast height that is 75 percent of the record tree of the same species for the state.

Spreader swale means a ditch positioned parallel to the receiving water body that allows for indirect discharge of stormwater in excess of the retained or detained volume.

Storm event means the occurrence of a rainfall of specified frequency and duration, e.g. 25-year, or three-day storm.

Stormwater means the flow of water which results from a rainfall event.

Stormwater management plan means the detailed analysis describing how the rainfall control system for the proposed development has been planned and designed, and will be constructed to meet the requirements of this chapter.

Stormwater management system means the natural and constructed features of the property that are designed to treat, collect, convey, channel, hold, inhibit or divert the movement of surface water.

Stormwater runoff means that volume of rainfall that does not percolate into the ground, nor evaporates, nor is intercepted before reaching the stormwater management system.

Structure means anything constructed, installed or portable, the use of which requires a location on a parcel of land.. The term includes, but is not limited to, buildings, roads, walkways of impervious materials, paths, fences, swimming pools, sport courts, poles, transmission lines, signs, cisterns, sewage treatment plants, sheds, docks, and other accessory construction.

Submerged land means the area situated below the mean high tide line and/or the mean high water line of a body of water, including ocean, estuary, lake, pond, river or stream. For the purpose of this definition, drainage detention areas created as a function of development that are recorded on an approved final site plan or other authorized development order action of the County, and wetlands landward of the mean high water line, shall not be considered submerged land.

Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the pre-destruction market value of the structure, as determined by the office of the tax assessor of the county, either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimension of the structure. The term does not, however, include either:

(1) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are necessary solely to ensure safe living conditions; or
(2) Any alteration of a structure listed on the National Register of Historic Places, the state inventory of historic places, or any inventory of local historic places.

Substantial improvement, cumulative, means that improvement which is not substantial by itself but, when added to all prior non-substantial improvements to the original structure, would cause all the improvements to be substantial if permitted at one time. All applications deemed substantial or non-substantial must be approved by the FEMA Coordinator, the Assistant County Administrator, or the Building Official.

Surface water. See "Water body."

Swale means a shallow constructed ditch with the bottom above the water table.

Temporary Housing, Emergency or Non-Emergency, means recreational vehicles (or similar approved sheltering units) used for temporary occupancy.

Temporary uses means uses that are required for a defined period of time during the construction phase of permitted development (including, but not limited to, equipment storage, material storage, construction/safety fencing and office trailers), capital improvements, and uses that are

uniquely seasonal in nature (including but not limited to, public assemblies, holiday-related outdoor events such as Christmas tree and pumpkin sales, temporary emergency shelters, concerts, carnivals, art shows, seminars and other educational events, and tent meetings).

Threatened and endangered species means plant or animal species listed as such under the provisions of the federal Endangered Species Act, and/or Florida Statutes, and/or the Florida Endangered and Threatened Special Act.

Transient unit means a dwelling unit used for transient occupancy such as a hotel or motel room, a seasonal residential unit, a campground space, an institutional residential use, or a recreational vehicle space.

Transit means transportation services available to the public on a regular basis by bus, rail, or other vehicle, and usually on a fare-paying basis. Transit may be provided by either public, private or non-profit entities.

Transitional recreational vehicle unit is a recreational vehicle unit identified for conversion from a recreational vehicle to a seasonal residential unit within an approved development agreement with Monroe County establishing a phased transition from a traditional recreational vehicle park to a seasonal residential use.

Transitional habitat means the salt marsh and buttonwood association.

Tree caliper means an instrument for measuring external dimensions. As used in this land development code, this is an instrument used to measure a tree trunk at six (6) inches above grade.

Trip means a single or uni-directional movement with either the origin or destination existing or entering inside the study site.

Trip generation means the attraction or production of trips caused by a given type of land development.

Tropical Hardwood Hammock means an upland hardwood forest community consisting of broad-leafed trees, shrubs, and vines, nearly all of which are native to the West Indies. Characteristic tropical plants include strangler fig, gumbo-limbo, mastic, bustic, lancewood, ironwoods, poisonwood, pigeon plum, Jamaica dogwood, and Bahama lysiloma.

Upland means the area of a site landward of mean high water, excluding submerged lands and tidally inundated mangroves.

Upland Native Vegetation/Habitat (see *Native Upland Vegetation/Habitat*).

Unlawful structure means a structure that is not a lawful structure as allowed by the LDC at the time the structure was developed.

Utility means facilities such television cable, telephone exchanges, electric generation plants, stormwater collection systems, high power transmission lines and substations, gas distribution lines and sewage treatment collections systems and disposal plants.

Vacation rental or unit means an attached or detached dwelling unit that is rented, leased or assigned for tenancies of less than 28 days duration. Vacation rental use does not include hotels, motels, and RV spaces, which are specifically addressed in each district.

Vessel means every description of watercraft, barge, seaplane and airboat, used or capable of being used as a means of transportation on water.

Wastewater nutrient reduction cluster systems means wastewater treatment systems that are designed to serve multiple residences that are located on more than one parcel of land. These systems are permitted by the Florida Department of Health.

Wastewater treatment collection system means the use of land and its above ground installed appurtenances related to the collection and transmission of wastewater to a treatment facility located on another parcel of land.

Wastewater treatment facility means the use of land and its appurtenances for the treatment of wastewater collected predominately from other parcels of land.

Water or *community water* means all water on or beneath the surface of the ground, including the water in any watercourse, water body or wetland.

Water access walkway means a structure built and used exclusively for access to the water for leisure activities such as fishing, swimming, or observation, but by its design may not be used as a dock.

Water at least four feet below mean sea level at mean low tide means locations that will not have a significant adverse impact on off-shore resources of particular importance. For the purposes of this definition, "off-shore resources of particular importance" means hard coral bottoms, habitat of state or federal threatened and endangered species, shallow water areas with natural marine communities with depths at mean low tide of less than four feet and all designated aquatic preserves under F.S. chapter 258, pt. II (F.S. section 258.35 et seq.).

Water body or *surface water* means a natural or artificial watercourse, pond, bay, and coastal waters of the county extending to a landward limit defined by F.S. section 403.031.

Water-dependent facility means a use that is functionally dependent on actual access to open waters.

Water detention facility means a stormwater management facility that provides for the delay of movement or flow of a specified volume of stormwater for a specified period of time.

Water retention facility means a stormwater management facility that provides for storage of a specified volume of stormwater without discharge from the retention structure.

Water table means the boundary between the zone of saturation and the zone of aeration; it varies with such factors as tide and the amount of rainfall.

Watercourse means a channel, canal or streambed, either natural or manmade, which is involved in the accommodation of floodwaters.

Wet detention means the delay of stormwater runoff prior to discharge into receiving waters in a structure with a bottom elevation below the water table or control elevation.

Wet retention means the prevention of stormwater runoff from direct discharge into receiving waters in a structure with a bottom elevation below the water table or control elevation.

Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Wetlands are those areas that meet the criteria specified in the State of Florida's *Wetland Delineation Manual* and/or the *United States Army Corps of Engineers Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region.* The term wetlands also includes adjoining wetlands and isolated wetlands. Adjoining wetlands includes wetlands separated from other Waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and similar barriers. Isolated wetlands includes wetlands that are not contiguous, bordering, or neighboring other Waters of the United States. (Florida Keys wetlands include freshwater marsh, salt marsh, buttonwood, salt ponds, freshwater lenses, mangroves, and some areas of tropical hardwood hammocks and pinelands).

Wetland boundary means the landward extent of wetlands dominated by plant species, soils and other hydrologic evidence indicative of regular and periodic inundation or saturation.

Wind turbine means an energy conversion system that converts kinetic energy from the wind into electrical power through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and external pad-mounted transformer, if any.

Yard, front, means a required setback on a parcel of land that is located along the full length of the front property line of the parcel and is generally adjacent to a road. On parcels fronting more

than one road, such as corner lots and double frontage parcels, each yard along a road shall be a front yard.

Yard, rear, means a required setback on a parcel of land that is located along the full length of the rear property line and is generally on the side opposite to the primary front yard.

Yard, side, means a required setback on a parcel of land that is located along the full length of the side property line and is generally between the front and rear property lines.

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Sec. 101-2. Rules of Construction.

In the construction of the language of this Land Development Code, the rules set out in this section shall be observed unless such construction would be inconsistent with the manifest intent of the BOCC as expressed in the Monroe County Comprehensive Plan, or an element or portion thereof, adopted pursuant to F.S. Ch. 163 and F.S. Ch. 380. The rules of construction and definitions set out herein shall not be applied to any section of these regulations that shall contain any express provisions excluding such construction, or where the subject matter or context of such section is repugnant thereto.

(1) Generally.

a. All provisions, terms, phrases and expressions contained in this Land Development Code shall be liberally construed in order that the true intent and meaning of the BOCC may be fully carried out. Terms used in this Land Development Code, unless otherwise specifically provided, shall have the meanings prescribed by the statutes of Florida for the same terms.

b. In the interpretation and application of any provision of this Land Development Code, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this Land Development Code imposes greater restrictions upon the subject matter than a general provision imposed by this Code or another provision of this Land Development Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

(2) Computation of time. The time within which an act is to be done shall be computed by excluding the first day and including the last day; if the last day is a Saturday, or a Sunday or a legal holiday, that day shall be excluded. However, when a hearing of the board of county commissioners or planning commission is required by these regulations to be held at a site certain, and within a certain time period, and the meeting schedule of either the board or commission makes it impossible to meet both the site and time requirements without scheduling a special meeting, then the hearing shall be set for the next regularly scheduled meeting at the required site without regard to the required time period.

(3) Delegation of authority. Whenever a provision appears requiring the head of a department or some other county officer or employee to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize professional-level subordinates to perform the required act or duty unless the terms of the provision or section specify otherwise.

(4) Gender. Words importing the masculine gender shall be construed to include the feminine and neuter.

(5) Month. The term "month" means a calendar month.

(6) Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

(7) Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing. The use of the plural number shall be deemed to include any single person or thing.

(8) Usage of shall and may. The word "shall" is mandatory and the word "may" is permissive.

(9) Tense. Words used in the past or present tense include the future as well as the past or present.

(10) Week. The term "week" shall be construed to mean seven days.

(11) Written; in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

(12) Year. The term "year" means a calendar year, unless a fiscal year is indicated.

(13) Boundaries. Interpretations regarding boundaries of land use (zoning) districts on the land use district map shall be made in accordance with the following, as partially illustrated in this section in the figure entitled Interpretation of Boundaries:

a. Boundaries shown as following or approximately following any road shall be construed as following the centerline of the road.

b. Boundaries shown as following or approximately following any platted lot line or other property line shall be construed as following such line.

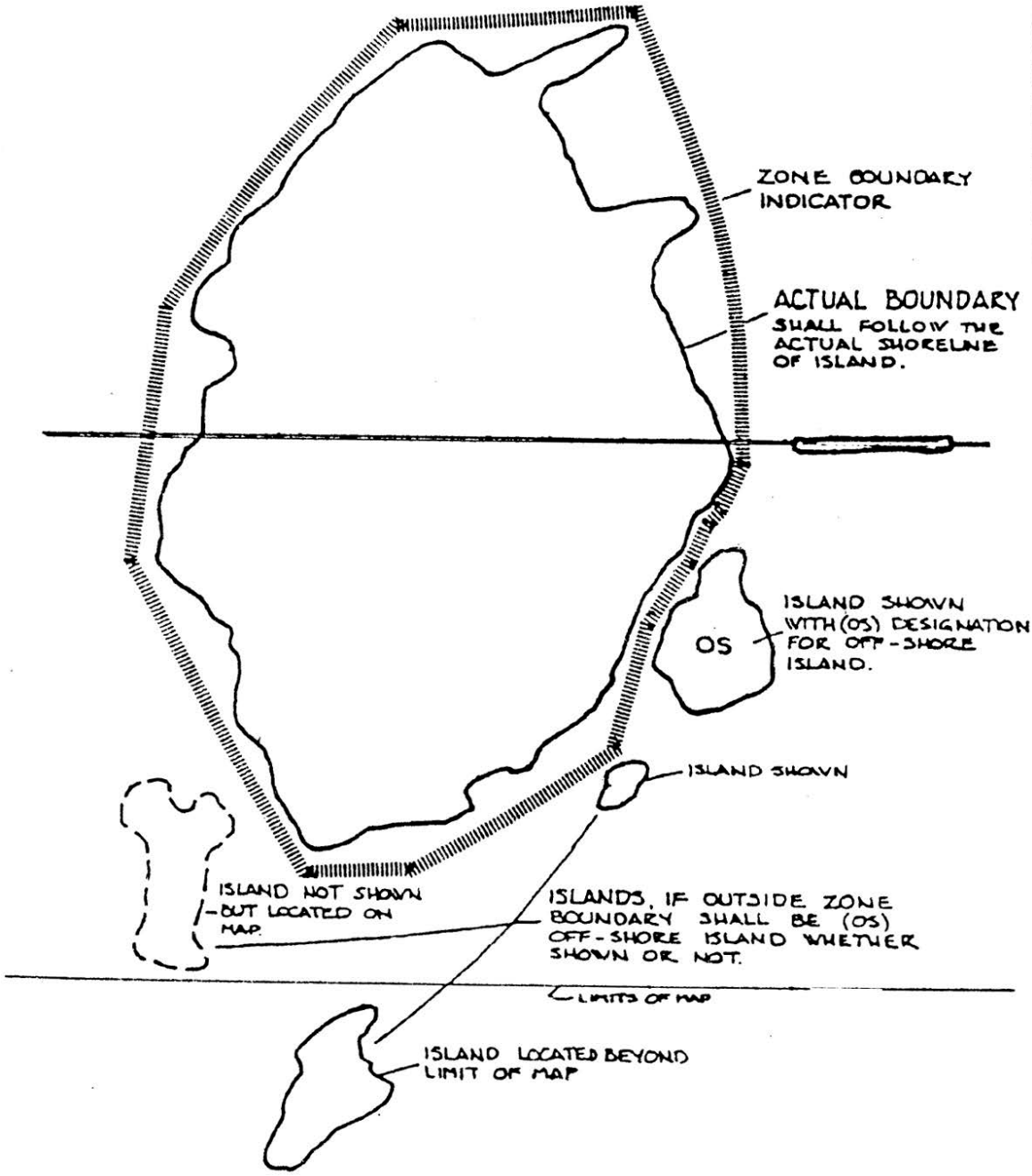
c. Boundaries shown as following or approximately following section lines, half-section lines, or quarter-section lines shall be construed as following such lines.

d. Boundaries shown as following or approximately following the shorelines of any key or other island shall be construed as following the mean high-water line of such island or key. In many instances, the boundary lines have been intentionally drawn seaward of the shoreline so that the shoreline itself will be visible.

e. All islands without a specific land use designation shall be considered zoned as Offshore Island (OS) whether they are labeled as OS, unlabeled, not shown on these maps, or lie beyond the areas covered by these maps.

f. Boundaries shown as separated from and parallel or approximately parallel to any of the features listed in subsection (13) of this section shall be construed to be parallel to such features and at such distances therefrom as are shown on the map.

INTERPRETATION OF BOUNDARIES



Sec. 101-3. Purpose.

(a) It is the purpose of this chapter, the land development regulations, to establish the standards, regulations, and procedures for review and approval of all proposed development of property in the unincorporated areas of the county, and to provide a development review process that is comprehensive, consistent and efficient in the implementation of the goals, objectives and policies of the comprehensive plan.

(b) In order to foster and preserve public health, safety, comfort and welfare, and to aid in the harmonious, orderly and progressive development of the unincorporated areas of the county, it is the intent of this Land Development Code that the development process in the county be efficient, in terms of time and expense; effective, in terms of addressing the natural resource and public facility implications of proposed development; and equitable, in terms of consistency with established regulations and procedures, respect for the rights of property owners, and consideration of the interests of the citizens of the county.

(c) The board of county commissioners deems it to be in the best public interest for all development to be conceived, designed and built in accordance with good planning and design practices and the minimum standards set forth in this Land Development Code.

Sec. 101-4. Applicability.

(a) Generally. The provisions of this Land Development Code shall apply to the unincorporated areas of the county. All development of whatever type and character, whether permitted as of right or as a conditional use, shall comply with the development standards and the environmental design criteria set forth the Comprehensive Plan and the Land Development Code. No development shall be undertaken without prior approval and issuance of a development permit under the provisions of this Land Development Code and other applicable laws and regulations.

(b) Exception.

(1) The provisions of this Land Development Code and any amendments hereto shall not affect the validity of any previously and lawfully issued and effective building permit, provided that construction authorized by such permit has been commenced prior to the effective date of any amending ordinance from, and provided that construction continues without interruption until development is complete. In the event a building permit expires, then all further development shall be permitted in conformance with the requirements of the comprehensive plan and the Land Development Code.

(2) Notwithstanding the provisions of the Monroe County Comprehensive Plan, an applicant for a development agreement, conditional use permit, variance and/or an appellant seeking review of an administrative decision that is pending on the date of adoption of any ordinance amending the text of this Land Development Code in a manner affecting

the administrative decision shall be entitled to have his or her application or appeal considered pursuant to the regulations in effect immediately prior to the date of adoption of the ordinance amending the text of this Land Development Code in a manner affecting the administrative decision.

(3) Notwithstanding the provisions of the Monroe County Comprehensive Plan and this chapter, the holder of a final major development approval under the provisions of section 6-221 et seq. of the Monroe County Code now repealed and an applicant for major development approval, that was pending as of December 12, 1985, shall be entitled to the following rights:

a. The holder of a final major development approval granted prior to the effective date of the Monroe County Comprehensive Plan and the ordinance from which this chapter is derived shall be entitled to develop pursuant to the approved final major development approval, provided that construction is commenced within 12 months of the date the final major development approval was granted; in the event a major development was approved for more than one phase, only those phases for which construction was or is commenced within 12 months of the date the final major development approval was granted shall be entitled to be developed pursuant to this exemption; and

b. The applicant for a major development approval pending on December 12, 1985, shall be entitled to have his application considered for approval pursuant to the comprehensive plan and regulations in effect immediately prior to the effective date of the Monroe County Comprehensive Plan and the ordinance from which this chapter is derived, and if the approval is granted shall be entitled to develop pursuant to the approved final major development approval, provided that construction is commenced within 12 months of the date the final major development approval was granted. In the event a major development was approved for more than one phase, only those phases for which construction was or is commenced within 12 months of the date the final major development approval was granted shall be entitled to be developed pursuant to this exemption. With respect to major development in planning areas 41 and 43, the 12-month period for the commencement of construction, referred to in this subsection, shall not commence until August 1, 1988; however, should the proposed habitat conservation plan affecting these planning areas not be accepted by the board of county commissioners, the commencement date shall begin on the date the board rejects the concept of the habitat conservation plan. The planning commission shall continue after the effective date of the land development regulations for the exclusive purpose of considering such pending applications.

(4) Except as otherwise provided, all applications for development approval filed after the date of adoption of any ordinance amending the Comprehensive Plan or this Land Development Code shall be considered for approval under the comprehensive plan policies and regulations in effect at the time at which the application was found complete.

(c) *Existing uses prior to September 15, 1986.* All land uses existing on September 15, 1986 which are permitted as a conditional use under the terms of this Land Development Code but were not granted conditional use permit prior to the requirement shall be deemed to have a conditional use permit.

(d) Vacation rental use. Previous vacation rental uses shall be discontinued in any district that prohibits vacation rental uses, after the effective date of the ordinance from which this section is derived. All vacation rental uses shall obtain annual special rental permits regardless of when the use was first established.

Sec. 101-5. Penalties.

A violation of any provision of the comprehensive plan shall constitute a violation and shall be prosecuted in accordance with Chapter 8.

Sec. 101-6. Ownership Disclosures.

(a) *Purpose.* The purpose of this section is to provide the minimum requirements for disclosing ownership of property as it relates to certain applications required by this Land Development Code.

(b) *Intent.* The intent is to disclose the identity of true parties in interest to the public, thereby enabling the public to ascertain which parties will potentially benefit from land use-related applications.

(c) *Applicability.*

(1) Disclosure provisions are required for future land use map amendments, land use district (zoning) map amendments, overlay map amendments, developments of regional impact, development agreements, plat approvals, major conditional use permits and minor conditional use permits.

(2) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, assignment of interest, trust, option, assignment of beneficial or contractual interest, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, during application submittal for the types of applications provided in subsection (1), make a public disclosure, in writing, under oath, and subject to the penalties prescribed for perjury. In the case of a trust, the four largest beneficiaries must also sign the affidavit.

(3) This written disclosure shall be made to the planning director at the time of application. The disclosure information shall include the name and address of every person having a beneficial or contractual interest in the real property, however small or minimal. All

evidence submitted shall be subject to the planning director's satisfaction, and said satisfaction shall be liberally interpreted in favor of the county's interest.

(4) The planning and environmental resources department's applications shall notice applicants to make disclosures required under this section. When a required disclosure is not provided, the application may be found incomplete by the planning director.

(5) Exemptions to the requirements of this section include the beneficial interest which is represented by stock in corporations registered with the federal securities exchange commission or in corporations registered pursuant to F.S. chapter 517, whose stock is for sale to the general public.

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Chapter 102 - ADMINISTRATION

ARTICLE I. IN GENERAL

Secs. 102-1—102-18. Reserved.

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ARTICLE II. DECISION-MAKING AND ADMINISTRATIVE BODIES

Sec. 102-19. Board of County Commissioners (BOCC).

In addition to any authority granted the BOCC by state law, the Comprehensive Plan or this Land Development Code, the BOCC shall have the following powers and duties:

(a) To adopt and amend the future land use map, and official land use (zoning) district map after recommendation by the Planning Commission. The public hearings and adoptions shall take place at the BOCC's meeting site in Key West, Marathon or Key Largo, whichever site is closest to the subject property or next closest to the subject property;

(b) To initiate amendments to the text and maps of the Comprehensive Plan and this Land Development Code;

(c) To hear, review and adopt amendments to the text and maps of the Comprehensive Plan and this Land Development Code after recommendation by the Planning Commission;

(d) To designate and appoint a hearing officer to make recommendations in regard to determinations of vested rights or such other decisions as the BOCC may deem appropriate;

(e) To take such other action not delegated to the Planning Commission as the BOCC may deem desirable and necessary to implement the provisions of the Comprehensive Plan and this Land Development Code;

(f) To hear and act upon applications for developments of regional impact; development agreements; agreements with the State Land Planning Agency under Chapter 380, F.S.; plat approvals; floodplain management variances; appeals of the Planning Director's decisions on impact fees; and any other item which the BOCC, in its discretion, decides should be heard; and to make adoptions of findings of fact and orders for beneficial uses and vested rights; designations of archaeological, historical or cultural landmarks; designations of areas of critical county concern or any modification of such designations. The above-referenced public hearings and adoptions shall take place at the board's meeting site in Key West, Marathon or Key Largo, whichever site is closest to the subject property or at the board's meeting site that is next closest to the subject property. In the event a proposed area of critical county concern will affect various properties a portion of which are closest to one hearing site and a portion of which are closest to another, then at least one hearing shall be held at each site before any final board action may be taken; and

(g) To establish, by resolution, a schedule of fees to be charged by the Planning and Environmental Resources Department to persons filing text amendments, map amendments, land development permit applications, land development approval applications, and land development order applications however styled, and any land development order appeal however styled. In establishing the fee amounts, the Planning Director shall present evidence to the BOCC of the cost incurred by the Department in staff time, and material expended, that are usually required to review the particular item that is the subject of the proposed fee. The overall general administrative and operational overhead of the Department may not be included in the fee amount. While mathematical exactitude is not required, no fee adopted by the BOCC pursuant to this subsection may be

in excess of the amount reasonably supported by the evidence submitted by the Planning Director regarding the staff time incurred, and material expended, usually required for the review of the particular item that is the subject of the proposed fee. Any fee resolution considered by the BOCC pursuant to this subsection must be heard by the BOCC at a time certain public hearing with public notice provided in the same manner as the public notice required for the adoption of an ordinance under F.S. Section 125.66(2)(a). At the public hearing, members of the public must be afforded an opportunity to comment on the proposed fees. The fees established shall generally be nonrefundable; provided, however, the Planning Director may approve a refund of up to 50 percent of the fee upon good cause shown by the applicant and the finding that the refund will not result in Department staff time costs or material costs already expended going unreimbursed.

Sec. 102-20. Planning Commission.

(a) *Creation*. There is hereby established a Planning Commission.
(b) *Powers and duties*. The Planning Commission shall have the following powers and duties:

(1) To serve as the Local Planning Agency (LPA), required by F.S. Section 163.3174;
(2) To prepare or cause to be prepared a comprehensive plan or element thereof and make recommendations to the BOCC regarding the adoption or amendment of such comprehensive plan or element;
(3) To review and make recommendations to the BOCC in regard to amendment of the future land use map and official land use (zoning) district map;
(4) To hear, review and approve or disapprove applications for major conditional use permits, and those minor conditional use permits requiring review by the Planning Commission pursuant to Sec. 110-69;
(5) To prepare, hear, review and make recommendations to the BOCC on applications for amendment to the text of this Land Development Code, and to the consistency of the proposal with the adopted comprehensive plan;
(6) To hear, review and recommend approval or disapproval of all plats;
(7) To hear, consider and act on appeals of administrative actions;
(8) To act to ensure compliance with major conditional use permits, as approved and issued;
(9) To make its special knowledge and expertise available upon reasonable written request and authorization of the BOCC to any official, department, board, commission or agency of the county, state or federal government; and
(10) To adopt such rules of procedure necessary for the administration of its responsibilities not inconsistent with this article to govern the commission's proceedings.

(c) *Qualifications for membership*. Members shall be chosen from persons with experience in the areas of planning, environmental science, the business community, the development industry, and other local industries. Members of the Planning Commission shall be qualified electors in the county. In the event that any member is no longer a qualified

elector or is convicted of a felony or an offense involving moral turpitude while in office, the BOCC shall terminate the appointment of such person as a member of the Planning Commission.

(d) *Membership: appointment, removal, terms, and vacancies.*

(1) The Planning Commission shall be composed of five members. Vacancies shall be filled by nomination by the district's county commissioner for the district whose member on the BOCC made the previous appointment for the vacant seat. The county commissioner shall nominate a person qualified as provided in subsection (c) of this section to be approved by the BOCC by a vote of at least three members. The geographical representation of the Keys shall be considered, but not required when making appointments to the Planning Commission. If there is a vacancy on the Planning Commission which remains unfilled for more than 60 days, the County Mayor may appoint a person to hold the office until an appointment is approved by the BOCC.

(2) Members shall serve at the pleasure of the BOCC. Removal shall be approved by the affirmative vote of at least three members of the BOCC.

(3) All appointments shall terminate upon replacement by a county commissioner with another person appointed and approved by the BOCC. Confirmation of existing appointments or nominations for new appointments by all county commissioners elected in the fall of each election year shall be made by those commissioners at or before the regular monthly meeting of the BOCC in February of each year following an election year. If such ratification or appointment does not take place, the respective Planning Commission seat shall be deemed vacant. Terms of the Planning Commission appointments shall be from their appointment dates until replaced or terminated. Planning commission members serving as of August 1, 2009 shall be subject to the provision of this subsection and shall serve until replaced as described above, whether filling out the term of a previously appointed member or serving their own terms.

(4) At an annual organizational meeting, the members of the Planning Commission shall elect one of its members as chair and one as vice-chair. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. The chair shall serve a term of one year. No member shall serve as chair for more than two consecutive terms.

(5) The presiding officer of any meeting of the Planning Commission may administer oaths, shall be in charge of all proceedings before the Planning Commission, and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Planning Commission.

(6) If a Planning Commission member desires to be excused from attendance at any commission meeting, he/she shall contact the Planning Commission coordinator prior to the meeting. The Planning Commission coordinator shall report the request to the chair who shall make the determination to grant or deny the request. If any member of the commission shall fail to attend three regular consecutive meetings without prior notice and an excuse sufficient to the Planning Commission, such failure shall

constitute sufficient grounds for termination of the member's appointment. The Planning Commission coordinator shall notify the chair or the vice-chair, as the case may be, and he or she shall immediately file a notification of such nonattendance with the County Administrator for placement on the agenda of the BOCC; and the BOCC shall, by appropriate action, terminate the appointment of such person and fill the vacancy thereby created as soon as practicable.

(7) A representative of the school district shall be appointed by the school board as a non-voting ex-officio member of the Planning Commission and the representative may attend those meetings at which the Planning Commission considers text and map amendments to the Comprehensive Plan or Land Development Code that would, if approved, affect the school district by.

(8) The base commander of the Naval Air Station Key West or designee shall be a non-voting ex-officio member of the Planning Commission as long as such a requirement for military installation representation is in the Florida Statutes.

(e) *Planning Commission Coordinator/Recording secretary*. The Planning Director shall appoint a planning commission coordinator/recording secretary to serve the Planning Commission. The secretary shall keep minutes of all proceedings of the Planning Commission, which minutes shall be a summary of all proceedings before the Planning Commission, attested to by the secretary, and which shall include the vote of each member upon every question. The minutes shall be approved by a majority of the members of the Planning Commission voting. In addition, the secretary shall maintain all records of commission meetings, hearings and proceedings,, agendas and minutes.

(f) *Staff*. The Planning and Environmental Resources Department shall be the professional staff of the Planning Commission.

(g) *Quorum and necessary vote.* No meeting of the Planning Commission may be called to order, nor may any business be transacted by the Planning Commission, without a quorum consisting of at least three members of the Planning Commission being present. The chair shall be considered and counted as a member. The concurring vote of at least three members shall be necessary for the commission to take action on major conditional use permit applications, final plat applications, and text and map amendments to the text of the Comprehensive Plan and Land Development Code. All other actions shall require the concurring vote of a simple majority of the members of the commission then present and voting.

(h) *Compensation*. Planning Commission members shall be compensated as determined by the BOCC.

(i) *Meetings, hearings and procedure.*

(1) Regular meetings of the Planning Commission shall be scheduled monthly beginning January of every calendar year and special meetings may be scheduled as required by a majority of the BOCC, the chair of the Planning Commission, or a majority of the members of the Planning Commission.

(2) The regularly scheduled (monthly) meetings shall be held in Marathon. All items which relate to specific properties such as but not limited to major conditional use

permits, variances and administrative appeals, shall be held at the regularly scheduled meetings, with the exception of property specific applications that have extenuating circumstances that require such applications to be considered at special meetings in the lower or upper keys. The Planning Commission may, in its discretion, schedule special meetings as required by the demand for such meetings. In cases where an item is postponed due to the lack of a quorum of the Planning Commission, the item shall be continued to a special meeting or to the next available regular meeting. In cases where an item is postponed for any other reason, the item shall be continued to the next regularly scheduled meeting or as otherwise decided by the Planning Commission. Items which are related to specific properties, such as but not limited to text amendments to the comprehensive plan and the land development code t, may be heard in Marathon or the Planning Commission may, in its discretion, schedule such items for the most appropriate subarea or for additional meetings in the lower or upper keys.

(3) All meetings and hearings of the commission shall be open to the public.

Sec. 102-21. Planning and Environmental Resources Department.

(a) *Duties*. The Planning and Environmental Resources Department shall perform the planning and environmental functions for the county and shall provide technical support and guidance for action on applications for development approval and shall perform such other functions as may be requested by the BOCC or the Planning Commission.

(b) *Planning Director.*

(1) Creation and appointment. There shall be a Planning and Environmental Resources Director, also referred to as the Planning Director, selected and approved by the Assistant County Administrator and the County Administrator, and the BOCC if desired.

(2) Jurisdiction, authority and duties. In addition to the jurisdiction, authority and duties that may be conferred upon the Planning Director by other provisions of this Land Development Code, the Planning Director shall have the following jurisdiction, authority and duties:

a. To serve as staff to the Planning Commission and to inform such body of all facts and information at his or her disposal with respect to applications for development approval or any other matters brought before it;

b. To assist the BOCC and the Planning Commission in the review of the Comprehensive Plan, including the capital improvements program, the Land Development Code, and proposed amendments thereto;

c. To maintain and update the future land use map and official land use (zoning) district map;

d. To maintain development review files and other public records related to the department's affairs;

e. To review, or cause to be reviewed, applications for major conditional use permits and plat approvals;
f. To review and approve, approve with conditions, or deny applications for minor conditional use permits;
g. To recommend amendments to the Comprehensive Plan and the Land Development Code;
h. To render interpretations of the Comprehensive Plan, the Land Development Code, or the boundaries of the official land use (zoning) district map and future land use map;
i. To evaluate and act upon claims of nonconforming uses and structures;
j. To work to coordinate all local, regional, state and federal environmental and other land development permitting processes affecting development in the county;
k. To plan for and evaluate all transportation improvements for the county, and coordinate such activities with the Florida Department of Transportation;
l. To issue letters of understanding and letters of development rights determination;
m. To establish such rules of procedure necessary for the administration of his or her responsibilities under the Comprehensive Plan and Land Development Code; and
n. Whenever requested to do so by the County Administrator or the BOCC, with the assistance of other county departments, to conduct or cause to be conducted surveys, investigations and studies, and to prepare or cause to be prepared such reports, maps, photographs, charts and exhibits as may be requested.

(c) Development Review Committee.

(1) *Creation and composition.* As required for the items being reviewed, the Development Review Committee (DRC) shall be composed of the following members:

a. the Planning Director or his or her designee;
b. the Planning and Development Review Manager;
c. the Comprehensive Planning Manager;
d. the County Biologist;
e. he planner and/or biologist in charge of the particular item being considered;
f. public works and engineering personnel, as needed based on the applications being reviewed;
g. health department personnel, as needed based on the applications being reviewed;
h. the building official or his or her designee, as needed based on the applications being reviewed;
i. any other county employee or official designated by the County Administrator or the Planning Director;

j. representatives of any local, regional, state or federal agency that has entered into an intergovernmental agreement with the county for coordinated development review when appropriate; and

k. a representative of the state land planning agency shall serve as an ex officio member of the DRC as long as the county is located within an area of critical state concern.

(2) *Development review committee meetings.*

a. The DRC shall meet at least once a month unless there is no item for the agenda:

1. Review scheduled applications for development approval as required by this Land Development Code and provide comments on such applications to the Planning Director and the applicant.
2. Review scheduled applications for amendments to the text of the Comprehensive Plan and the Land Development Code and provide comments on such applications to the Planning Director and the applicant.
3. Review scheduled applications for amendments to the future land use map and official land use (zoning) district map and provide comments on such applications to the Planning Director and the applicant.

b. The Planning Director, or his or her designee, shall serve as chair of the DRC and the Planning Director or his or her designee shall maintain such minutes and records as are required by state law.

c. Any action reviewing an application shall not preclude the applicant's right to be present when his or her project is discussed before this body.

d. Staff reports on applications prepared by staff from the Planning and Environmental Resources Department shall be given to the Planning Director and the applicant.

e. Staff reports on applications prepared by DRC members not in the Planning and Environmental Resources Department may be provided to the other members of the DRC, the Planning Director, and the applicant.

f. A resolution and staff report, considering DRC recommendations and other relevant information shall be prepared after the DRC meeting for those items proceeding to the Planning Commission.

Sec. 102-22. County Attorney.

In addition to the jurisdiction, authority and duties that may be conferred upon the county attorney by other provisions of this Monroe County Code, the County Attorney shall have the following authority and duties:

(a) To review and approve as to form all written findings of fact and resolutions drafted by the Planning Commission or the BOCC in connection with any requirement of the Comprehensive Plan and the Land Development Code;
(b) To review and approve as to form all easements, declarations of covenants, letters of credit, performance guarantees or other such documentation; and
(c) To advise the staff of Planning and Environmental Resources Department, Development Review Committee, Planning Commission, and BOCC in regard to the legal issues that may arise during implementation of the Comprehensive Plan and the Land Development Code.

Sec. 102-23. County Engineer.

In addition to the jurisdiction, authority and duties that may be conferred upon the county engineer by other provisions of the Monroe County Code, the County Engineer shall have the following authority and duties:

(a) To serve as a member of the Development Review Committee;
(b) To review and approve the design specifications for required subdivision improvements;
(c) To calculate the amounts of required subdivision improvement guarantees;
(d) To determine the sufficiency of improvement guarantee fund balances; and
(e) To inspect, approve and recommend acceptance of public improvements.

Sec. 102-24. Hearing Officer.

(a) *Creation and appointment.* The BOCC shall appoint one or more hearing officers or special magistrates to hear and consider such matters as may be required under any provision of this land development code or as may be determined to be appropriate by the BOCC from time to time. Such hearing officers shall serve at the pleasure of the BOCC for such period as is determined by the BOCC. Such hearing officers shall be compensated at a rate to be determined by the BOCC, which amount shall be reimbursed to the county by the applicant. Whoever shall accept an appointment as a hearing officer shall, for a period of one year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application or other matter before any decision-making body of the county in any matter involving property that was the subject of a proceeding which was pending during the time he served as a hearing officer.
(b) *Minimum qualifications*. A hearing officer shall have the following minimum qualifications:

    (1) Be an attorney admitted to practice before the state supreme court;
    (2) Demonstrate knowledge of administrative, environmental and land use law practice and procedure; and
    (3) Hold no other appointive or elective public office or position during the period of appointment.

(c) *Duties*. A hearing officer shall have the following duties:

(1) To conduct hearings on such matters as required under the Land Development Code;
(2) To conduct hearings on such matters as may be requested by the BOCC;
(3) To render to the BOCC a written report containing a summary of the testimony and evidence given and findings and recommendations regarding the specific standards applicable to the particular application for development approval;
(4) To issue subpoenas to compel the attendance of witnesses and production of documents, and to administer oaths to witnesses appearing at the hearing; and
(5) To perform such other tasks and duties as the BOCC may assign.

Sec. 102-25. Qualified Biologists.

(a) County biologists. The county shall employ qualified biologists to be available to conduct the field surveys required under this Land Development Code. The costs incurred by the county for conducting such surveys shall be reimbursed by the applicant for development approval for whom the survey is conducted.
(b) Alternate biologists. An applicant for development approval may use a biologist not employed by the county for a required field survey, provided that the biologist is a professional familiar with the natural environment of the Florida Keys. Biological assessments by alternate biologists are subject to review and approval by the Planning and Environmental Resources Department and the Planning Director.

Secs. 102-26-102-53. Reserved.

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ARTICLE III. NONCONFORMITIES

Sec. 102-54. Purpose.

The purpose of this article is to regulate and limit the continued existence of uses and structures established prior to the date of the enactment of the original ordinance from which this Land Development Code is derived (September 15, 1986) and/or prior to the date of the enactment of a subsequent ordinance amending a land development regulation within this Land Development Code that do not or no longer conform to the provisions of this Land Development Code. Nonconformities may continue, but the provisions of this article are designed to curtail substantial investment in nonconformities and to bring about their eventual elimination in order to preserve the integrity of this Land Development Code.

Sec. 102-55. Registration.

(a) All known, lawful nonconforming uses and structures may be registered with the Planning and Environmental Resources Department. In the course of its duties related to development review, staff of the department shall identify and recognize nonconforming uses and structures. Property owners may also independently apply to the department for such determinations.

(b) The Planning Director, or his or her assigned designee, shall review available documents to determine if a body of evidence exists supporting the lawful establishment of a use or structure prior to the change in regulation that deemed the use or structure nonconforming. Any issued Monroe County building permit(s) for the original establishment or construction of the use or structure, confirming its approval and existence prior to the change in regulation that deemed the use or structure nonconforming, can stand as the only piece of evidence.

If there are no such building permit(s) available, additional evidence shall be documented and submitted to the Planning Director on a form provided by the Planning and Environmental Resources Department and shall include, at a minimum, at least two of the following documents:

(1) Any other issued Monroe County building permit(s) approving or supporting the existence of the structure(s) and/or use;
(2) Documentation from the Monroe County Property Appraiser's Office supporting the existence of the structure(s) and/or use;
(3) Aerial photographs and original dated photographs showing the structure or use existed on site;
(4) State and/or county licenses, supporting the existence of the structure(s) and/or use;
(5) Documentation from the utility providers indicating the type of service (residential or commercial) provided; and
(6) Similar supporting documentation not listed above as determined suitable by the Planning Director.

(c) Once discovered and determined to be lawful, the Planning Director, or his or her designee, shall add recognized lawful nonconforming uses and structures to an official registry.

Sec. 102-56. Nonconforming Uses.

(a) *Authority to continue*. Nonconforming uses of land or structures may continue in accordance with the provisions of this section. Notwithstanding any provision of this section or of this Land Development Code and/or the Comprehensive Plan:

(1) Leases, subleases, assignments or other occupancy agreements for compensation for less than 28 days in duration shall be discontinued and shall not be renewed, extended or entered into, in any district that prohibits vacation rental uses after the effective date of the original ordinance from which this section is derived (September 15, 1986) unless a vacation rental use was established and obtained all required state and local permits and licenses prior to September 15, 1986, under previous Monroe County Code provisions expressly allowing vacation rental uses; and

(2) Nonconforming nonresidential uses in OS, NA, SS, SR, SR-L, IS, IS-D, URM, and UR land use districts, which lawfully existed on January 4, 1996, may develop, redevelop, reestablish and/or substantially improve, provided that the use is limited in intensity, floor area, and to the type of use that existed on January 4, 1996 and is registered in accordance with section 102-55.

(b) *Ordinary repair and maintenance*. Normal maintenance and repair to permit continuation of nonconforming uses registered in accordance with section 102-55 may be performed.

(c) *Expansions*. Nonconforming uses shall not be expanded. This prohibition shall be construed so as to prevent:

(1) Enlargement of nonconforming uses by additions to the structure in which such nonconforming uses are located; or

(2) Occupancy of additional lands; however, accessory uses associated with a lawful nonconforming principal use may be permitted if in compliance with all other provisions of the LDC.

(d) *Relocation.* A structure in which a nonconforming use is located shall not be moved unless the use thereafter conforms to the provisions of the future land use category and the land use (zoning) district into which it is relocated.

(e) *Change in use.* A nonconforming use shall not be changed to any other use unless the new use conforms to the provisions of the future land use category and the land use (zoning) district in which it is located.

(f) *Termination.*

(1) *Abandonment or discontinuance.* Where a nonconforming use of land or structure is voluntarily discontinued or abandoned, as defined in Sec. 101-1, for eighteen (18) consecutive months, then such use may not be reestablished or resumed and any

subsequent use must conform to the provisions of this Land Development Code and the Comprehensive Plan. Leases, subleases, assignment or other occupancy agreement for compensation for less than 28 days in duration shall be discontinued and shall not be renewed, extended or entered into, in any district that prohibits vacation rental use after the effective date of the original ordinance from which this section is derived (September 15, 1986).

(2) *Damage or destruction*. Except as provided in Section 102-56(f)(3) and (4), if a structure in which a nonconforming use is located is damaged or destroyed so as to require substantial improvement, then the structure may be repaired or restored only for uses that conform to the provisions of the land use (zoning) district in which it is located. Fair market value shall be determined by reference to the official tax assessment rolls for that year or by an appraisal by a qualified independent appraiser. The extent of damage or destruction shall be determined by the building official, in consultation with the Planning Director, by comparing the estimated cost of repairs or restoration with the fair market value (such damage or destruction may be voluntarily or due to natural phenomena whose effects could not be prevented by the exercise of reasonable care and foresight).

(3) *Damage and destruction of nonconforming uses in commercial fishing districts (CFA, CFV and CFSD) and Community Center Overlay Districts (CC).* In the CFA, CFV, and CFSD land use (zoning) districts and the CC overlay districts identified in Section 130-132 through Section 130-140, nonconforming uses lawfully existing as of September 15, 1986, may be rebuilt even if 100 percent destroyed, provided that they are rebuilt to preexisting use, building footprint and configuration without increase in density or intensity of use identified in Section 130-157 and registered in accordance with section 102-55. Development shall be brought into compliance to the maximum extent practicable, as determined by the Planning Director.

(4) *Damage and destruction of water-dependent and water-related commercial nonconforming uses.* Lawfully established water-dependent and water-related commercial uses which are identified as a source of economic sustainability within a Livable CommuniKeys Plan may be permitted to be rebuilt even if 100 percent destroyed provided that they are rebuilt to preexisting use and registered in accordance with section 102-55. Development shall be brought into compliance to the maximum extent practicable, as determined by the Planning Director.

(5) *Amortization.* Any nonconforming use may be subject to compulsory termination when it is found detrimental to the conservation of the value of surrounding land and improvements, and therefore is tending to deteriorate or blight the neighborhood. In ordering the compulsory termination of a nonconforming use, the BOCC will establish a definite and reasonable amortization period during which the nonconforming use may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming use less their value and condition for a conforming use, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

Sec. 102-57. Nonconforming Structures.

(a) *Authority to continue.* A nonconforming structure devoted to a use permitted in the land use (zoning) district in which it is located, or devoted to a nonconforming use with authority to continue pursuant to Sec. 102-56, may be continued in accordance with the provisions of this section.

(b) *Ordinary repair and maintenance.* Normal maintenance and repair of nonconforming structures registered in accordance with section 102-55 may be performed.

(c) *Enlargements, expansions, and extensions.* Lawful nonconforming structures that are used in a manner conforming to the provisions of this Land Development Code and the Comprehensive Plan may be enlarged, expanded, or extended, provided that:

(1) the improvement does not constitute a substantial improvement;
(2) a nonconforming use is not located in the nonconforming structure; and
(3) the nonconformity is not further violated.

(d) *Relocation.* A nonconforming structure, other than a historic structure listed on the National Register of Historic Places, the Florida Inventory of Historic Places, and/or designated as historic by the BOCC, shall not be moved unless it thereafter shall conform to the regulations of the land use (zoning) district in which it is relocated.

(e) *Termination.*

(1) *Abandonment.* Where a nonconforming structure is voluntarily abandoned for 18 consecutive months, then such structure shall be demolished, removed or converted to a conforming structure.

(2) *Damage or destruction.*

a. A nonconforming structure that is damaged or destroyed to the extent of less than 50 percent of the fair market value of such structure may be restored as of right if a building permit for reconstruction is issued within six months of the date of the damage (such damage or destruction may be voluntarily or due to natural phenomena whose effects could not be prevented by the exercise of reasonable care and foresight).

b. Except as provided in section 135-5, chapter 122 in regard to mobile homes, and section 130-163, any nonconforming structure that is damaged or destroyed so as to require substantial improvement may be repaired or restored only if the structure conforms to the provisions of the land use (zoning) district in which it is located. Fair market value shall be determined by reference to the official tax assessment rolls for that year or by an appraisal by a qualified independent appraiser. The extent of damage or destruction shall be determined by the building official, in consultation with the Planning Director, by comparing the estimated cost of repairs or restoration with the fair market value.

c. Substantial improvement or reconstruction of nonconforming single-family residences shall comply with all applicable setback provisions of this Land

Development Code except where strict compliance would result in a reduction in lot coverage as compared to the pre-destruction footprint of the house. In such cases, the maximum shoreline setback shall be maintained and in no event shall the shoreline setback be less than ten (10) feet from mean high water.

(3) *Amortization.* Any nonconforming structure may be subject to compulsory termination when it is found detrimental to the conservation of the value of surrounding land and improvements, and therefore is tending to deteriorate or blight the neighborhood. In ordering the compulsory termination of a nonconforming structure, the BOCC will establish a definite and reasonable amortization period during which the nonconforming structure may continue while the investment value decrement resulting from termination is amortized. Determination of the amount to be amortized shall be based on the value and condition of the land and improvements for the nonconforming structure less their value and condition for a conforming structure, and such other reasonable costs as the termination may cause. The rate of amortization shall be in accordance with reasonable economic practice.

(f) *Water-dependent and water-related commercial nonconforming structures*. Lawfully established water-dependent and water-related nonresidential structures which are identified as a source of economic sustainability within a Livable CommuniKeys Plan may be permitted to be rebuilt even if 100 percent destroyed provided that they are rebuilt to preexisting use and registered in accordance with section 102-55. Development shall be brought into compliance to the maximum extent practicable, as determined by the Planning Director.

Sec. 102-58. Nonconforming Accessory Uses and Accessory Structures.

(a) A nonconforming accessory use shall not continue after the principal use has terminated.
(b) A nonconforming accessory structure shall not continue after the principal use or structure is demolished or otherwise eliminated unless the structure is modified to conform to the provisions of the land use (zoning) district in which it is located and is associated with a new principal use.

Secs. 102-59—102-78. Reserved.

ARTICLE IV. PROTECTION OF LANDOWNERS' RIGHTS

DIVISION 1. GENERALLY

Sec. 102-79. Purpose.

It is the purpose and intention of the BOCC to ensure that each and every landowner has a beneficial use of his property in accordance with the requirements of the Fifth and Fourteenth Amendments to the United States Constitution and to provide a procedure whereby landowners who believe they are deprived of all beneficial use may secure relief through an efficient nonjudicial procedure.

Secs. 102-80—102-101. Reserved.

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DIVISION 2. BENEFICIAL USE DETERMINATIONS

Sec. 102-102. Generally.

If, after a final decision or action by the county, including available variances, a landowner is of the opinion that the adoption or application of a county Land Development Code or Comprehensive Plan policy has caused a taking of the landowner's property, the procedures of this division shall be used prior to seeking relief from the courts.

Sec. 102-103. Purpose and Intent.

(a) The purpose of this division is to ensure that the adoption or application of a county Land Development Code or Comprehensive Plan policy does not result in an unconstitutional taking of private property.

(b) The intent of the BOCC is that this division provide a means to resolve a landowner's claim that a Land Development Code or Comprehensive Plan policy has had an unconstitutional effect on property in a nonjudicial forum. This division 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 under this division. Further, the procedures of this division are not intended, nor do they create, a judicial cause of action.

Sec. 102-104. Exhaustion.

Relief under this division cannot be established until the landowner has received a final decision on development approval applications from the county, including building permit allocation system applications, appeals, administrative relief pursuant to sections 138-27 and 138-54, and other available relief, exceptions, or variances, unless the applicant asserts that a land development regulation or comprehensive plan policy, on its face, meets the standards for relief in section 102-109.

Sec. 102-105. Application; Applicability; Sufficiency.

(a) *Generally*. An application for a beneficial use determination may be made to the Planning and Environmental Resources Department by filing an application and an application fee as established by the BOCC.

(b) *Contents of application*. The application shall be submitted in a form established by the county and shall include the following:

  (1) Contact information. The name, address, email address and phone number of the landowner and applicant or agent;

  (2) Legal description. A legal description and the real estate number for the property;

(3) Letter of agency. If a person other than the landowner is requesting relief pursuant to this division, a notarized letter of agency from the landowner authorizing the person to represent them with respect to the application. Except as specifically provided herein, the landowner will be bound by the representations, obligations, and agreements made by the landowner's agent in the course of the beneficial use determination process. The term "applicant" as used in this division refers to the landowner or the landowner's agent, as applicable;

(4) Date of acquisition, offers to purchase, attempts to sell. Documentation of the date of acquisition, the price incurred to acquire the property, the date and amount of any offers by any person, corporation, governmental entity, or association to acquire the property, and any attempts by the landowner to sell the property;

(5) Land Development Code or Comprehensive Plan policy. A statement describing the Land Development Code, Comprehensive Plan policy, or other final action of the county, which the applicant believes necessitates relief under this division, including the effective date of the Land Development Code or Comprehensive Plan policy and/or the date of the final action by the county related to the property. The application shall identify the subject Land Development Code or Comprehensive Plan policies of the county by section and number;

(6) Description of land. A description of the property's physical and environmental features, total acreage, and use presently, at the time of acquisition, and upon the effective date of the Land Development Code or Comprehensive Plan policy or other final action the applicant believes necessitates relief under this division;

(7) Improvements to land. Evidence of any investments made to improve the property, the date the improvements were made, and the cost of the improvements;

(8) Description of allowable uses. A description of the type and extent of land uses allowed on the property, from the time the applicant acquired the property until the date of application under this division, including allowable density, permitted and conditional uses, open space ratios, and other factors affecting the property's development potential;

(9) Requested relief. A statement regarding the form of relief requested by the landowner, pursuant to section 102-110

(10) Maps. Maps shall be included in the application, which show the property presently, at the time of acquisition, and upon the effective date of the Land Development Code, Comprehensive Plan policy, or other action of the county the applicant believes necessitates relief under this division. Maps shall indicate the land use (zoning) designation, future land use designation, tier overlay designation, aerial photography, and environmental conditions and habitat on the property at the above times;

(11) Previous development applications and appeals. A description of all efforts to seek approval to develop the property, including date of application; name of the local, state, or federal permitting agency; nature of approval, denial, or appeal sought; disposition; and the date of disposition;

(12) Agency approvals. Evidence of whether the applicant has received necessary approvals from governmental agencies other than the county, which are required in

order to undertake development of the property, including, as applicable, evidence that approvals from other agencies are not required;

(13) Signature of landowner and agent. The signature of landowner and agent, attesting to the accuracy of the statements and representations made in the application; and

(14) Additional materials. Any other appraisals, studies, or evidence supporting the applicant's contention that relief under this division is appropriate, including appraisals related to any alleged diminution in fair market value of the property.

(c) *Standards applicable to landowner and landowner's representative.*

(1) The landowner and the landowner's representative shall exercise due diligence in the filing of the application for relief under this division.

(2) The signature upon the application by the landowner and the landowner's representative shall constitute a certification that the landowner and landowner's representative have undertaken due diligence in the filing of the application, that to the best of his or her knowledge the application is supported by good grounds under applicable laws, and that the application has been filed in good faith, consistent with the purpose and intent of this division.

(3) The landowner and the landowner's representative shall have a continuing obligation throughout the proceedings to correct any statement or representation found to have been incorrect when made or which becomes incorrect by virtue of changed circumstances.

(4) If a claim for relief pursuant to this division is based upon facts the landowner or the landowner's representative knew or should have known were not correct or upon assertions of law that were frivolous, the special magistrate may dismiss the application and may recommend any remedy or penalty to the board provided by law or ordinance.

(d) *Determination of sufficiency*. Within 15 calendar days of accepting the application, the Planning Director, or his or her designee, shall determine if the application is complete and includes the materials and information listed in subsections (b)(1)—(13) of this section. The special magistrate may require the landowner or the county to provide additional information in order to make a determination under this division and may conduct a hearing on whether the application should be dismissed for failure to include information necessary to make a recommendation, based on the standards set forth in this division.

(1) *Determined insufficient*. If the Planning Director determines the application is not complete, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within 30 calendar days of a notice of deficiencies, the application shall be considered withdrawn, and the application fee shall be refunded to the applicant, upon request.

(2) *Determined sufficient*. When the application is determined sufficient, the Planning Director shall notify the applicant in writing and, within 60 calendar days, forward

the application to a special magistrate to set a hearing date. The Planning Director may forward to the special magistrate additional materials, applications, or decisions related to the application, including recommended forms of relief, consistent with this division.

Sec. 102-106. Action by the Special Magistrate.

(a) Establishment of date for hearing and notice. The special magistrate shall schedule and hold a hearing on an individual beneficial use determination application within 90 calendar days of receipt of the complete application from the Planning Director.

(b) Hearing. At the hearing, the landowner or landowner's representative shall present the landowner's case and the Planning Director or his or her representative shall represent the county's case. The special magistrate may accept briefs, evidence, reports, or proposed recommendations from the parties.

(c) Recommendation of the special magistrate. Within 60 calendar days of the close of the hearing, the special magistrate shall prepare and transmit in writing to the Planning Director and the landowner, or their representatives, a recommendation regarding the application, based on the evidence submitted and the standards set forth in sections 102-109 and 102-110

(1) If the special magistrate's recommendation is that relief is not appropriate, the special magistrate's recommendation shall specify the basis for the recommendation.

(2) If the special magistrate's recommendation is that relief is appropriate, the special magistrate's recommendation shall:

a. Recommend a form of relief, pursuant to section 102-110; and

b. Indicate the basis for the recommendation, including, as applicable:

1. Identification of the county Land Development Code, Comprehensive Plan policy, or other action that resulted in the recommendation for relief; and

2. The date the Land Development Code, Comprehensive Plan policy, or other final action of the county affected the property so as to necessitate relief.

Sec. 102-107. Action by the Planning Director.

Based on the recommendations of the special magistrate, the Planning Director shall prepare the item for consideration by the BOCC. The Planning Director may not disturb or alter the recommendations of the special magistrate. Within 30 calendar days of receipt of the recommendations of the special magistrate, the Planning Director shall forward the special magistrate's recommendation to the BOCC to set a public hearing on the matter. The Planning Director may include with the recommendation a proposed process and schedule for implementing the special magistrate's recommendation.

Sec. 102-108. Action of the BOCC.

(a) Following receipt of the matter from the Planning Director, the BOCC shall set the matter for a public hearing. The county shall provide advertised notice of the hearing and the applicant shall provide posted notice of the hearing on the subject property according to the noticing standards in Section 110-5. Mailing of notice to surrounding property owners shall not be required. The applicant shall be provided an opportunity to be heard prior to the decision of the BOCC. The recommendation of the special magistrate is not binding on the BOCC. At the hearing, the BOCC, by resolution, shall approve, modify, reverse, or approve with conditions, the recommendations of the special magistrate, based on the standards of sections 102-109 and 102-110. The resolution shall:

(1) State the date, if any, upon which any resolution granting relief will cease to be in effect;
(2) State that neither the board's resolution nor any process or evidence associated with this division is an admission of a taking of property;
(3) Direct county staff to undertake any additional steps necessary to implement the resolution; and
(4) Address other matters necessary to implement the purpose and intent of this division.

(b) Upon the filing of an application for a beneficial use determination, the application shall be deemed abandoned or expired if the applicant does not obtain a final decision of the BOCC on the application, pursuant to this section, within three (3) years.

Sec. 102-109. Beneficial Use Standards.

(a) Standard. In furtherance of the purpose and intent of this division, and consistent with Policy 101.17.4 of the comprehensive plan, relief under this division may be granted where a court of competent jurisdiction likely would determine that a final action by the county has caused a taking of property and a judicial finding of liability would not be precluded by a cognizable defense, including lack of investment-backed expectations, statutes of limitation, laches, or other preclusions to relief. Whether such liability, at the time of application under this division, is likely to be established by a court should be determined based on applicable statutory and case law at the time an application is considered under this division.
(b) Burden. The applicant shall have the burden of showing that relief under this division is appropriate.

Sec. 102-110. Granting of Relief.

(a) *General*. If the BOCC determines that relief is appropriate under this division, relief may be granted, as provided in this section and consistent with the comprehensive plan.
(b) *Forms of relief*. In order to avoid an unconstitutional result and to provide a landowner with an economically viable use of property pursuant to this division, the special magistrate

may recommend and the BOCC may allow for additional uses, density (as a last resort), or relief beyond that allowed by a literal application of the Land Development Code or Comprehensive Plan on the particular property, which may include:

(1) Redesignation of the property on the land use (zoning) map or future land use map;
(2) Granting of a permit for development which shall be deducted from the Permit Allocation System. Permits issued pursuant to this section shall be subject to applicable construction deadlines and expiration dates under Chapter 6;
(3) Transferable development rights (TDRs);
(4) Eligibility for dedication of the property pursuant to section 138-28(5);
(5) 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. This alternative shall be the preferred alternatives for Tier I, II or III-A (SPA) lands; and/or
(6) Such other relief as the BOCC may deem appropriate and adequate under Section 102-109 and the Comprehensive Plan.

(c) *Minimum increase*. Relief granted pursuant to this division shall be the minimum necessary to comply with section 102-109. The highest, common, or expected use, is not intended as an appropriate remedy, unless expressly required by applicable statute or case law.

Secs. 102-111—102-133. Reserved.

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DIVISION 3. VESTED RIGHTS

Sec. 102-134. Determination of Vested Rights.

(a) *Purpose*. Notwithstanding any other provision of this Land Development Code, an application for a permit may be approved if an applicant has demonstrated development expectations that are vested under the standards of section 102-136.

(b) *Limitation*. An application for a determination of vested rights shall be filed within one year of the effective date of the ordinance from which this Land Development Code is derived or the alleged vested right shall be deemed abandoned.

Sec. 102-135. Procedure for Vested Rights Determinations.

An applicant for vested rights determination will be afforded a quasi-judicial, evidentiary hearing in front of a special magistrate who will make a proposed determination and a statement of what rights are vested. Interested persons will be afforded the opportunity to appear and introduce evidence and argument for or against the determination during the evidentiary hearing. The special magistrate's proposed determination shall be forwarded to the BOCC for final approval.

Sec. 102-136. Standards and Criteria for Vested Rights.

In making the proposed determination, the special magistrate will consider, in furtherance of the guidelines contained in Policy 101.17.1 of the Comprehensive Plan, the following criteria:

(a) The vested rights determination shall be limited to rights acquired prior to adoption of the Comprehensive Plan or Land Development Code in effect at the time of filing of the vested rights application and shall vest only that development specifically and expressly contemplated by the valid, unexpired official act of the county.

(b) The applicant shall have the burden of proof to demonstrate that:

(1) There is a valid, unexpired official act (as enumerated below in subsection (b)(1)a., (b)(1)b., (b)(1)c., or (b)(1)d. of this section) of the county approving the proposed development that occurred prior to the effective date of the Comprehensive Plan or Land Development Code in effect at the time of filing of the vested rights application. To be a valid act, the act must have been in compliance with the land development regulations that existed at the time of approval, and the approval must have been issued by an official or commission properly delegated with the authority to issue the approval. Any one of the following may constitute an official act of the county for purposes of the vested rights determination:

a. A valid, unexpired building permit issued prior to the effective date of the comprehensive plan or land development regulations in effect at the time of filing of the vested rights application;

b. One or more valid, unexpired permits or approvals issued by the county, except that mere approval of a land use (zoning) designation or future land use designation is insufficient to establish vested rights without additional permits or approvals for a specific development project, i.e., mere zoning cannot be considered an official act that can form the basis of a vested rights determination;

c. A subdivision plat recorded in the official records of the county, which fulfills the criteria set forth in F.S. Section 380.05(18), may be an official act except that individual lots within the subdivision must also demonstrate that this applicant acquired a vested right to build on the individual lot by obtaining additional governmental approvals or official acts concerning development on the individual lot prior to adoption of the comprehensive plan and land development regulations in effect at the time of the filing of the vested rights application, and an applicant must still demonstrate compliance with subsections (b)(2), (b)(3) and (b)(4) of this section with respect to development on each individual lot; or

d. A valid, unexpired vested rights determination approved pursuant to the 1986 Comprehensive Plan and land development regulations, sections 102-134—102-137;

(2) This individual, particular applicant:

a. Relied upon the official act in good faith. (For example, the applicant must not have had notice or knowledge of an imminent or pending change in zoning, allowable uses or density, etc. A change is imminent or pending if notice of the change was published or there are active and documented efforts to develop and approve the proposed change at the time the property was purchased or expenses were incurred); and

b. Had a reliance that was reasonable. (For example, an act of purchasing the property, entering into contracts or incurring additional obligations done after the Comprehensive Plan was pending or became effective does not constitute reasonable reliance);

(3) This applicant incurred such substantial obligations and expenditures that it would be highly inequitable or unjust to require that the development conform with the Comprehensive Plan and Land Development Code in effect at the time of the filing of the vested rights application. To meet this requirement the applicant must demonstrate that:

a. Application of the Comprehensive Plan and Land Development Code in effect at the time of the filing of the vested rights application would prevent or prohibit the applicant from completing the proposed development. For example, if the applicant could still complete the proposed development under the Comprehensive Plan and Land Development Code in effect at the time of the

filing of the vested rights application without undue hardship by making mere modifications to the development plan, the applicant cannot demonstrate a vested right and must make the modifications required by the comprehensive plan and land development regulations in effect at the time of the filing of the vested rights application; and

b. Substantial changes of position or expenditures incurred prior to the official act upon which the vested rights claim is based are undertaken at the applicant's own risk and will not be considered in making a vested rights determination.

(4) Development of this project has commenced and has continued in good faith without substantial interruption.

Sec. 102-137. Limitations on Vested Rights Determinations.

(a) In furtherance of those guidelines listed in Policy 101.17.1 of the Comprehensive Plan, a vested rights determination shall also contain the following:

(1) Verification that the applicant has met the burden of proof for the items listed in section 102-136;
(2) A clear statement of what part of the applicant's development is vested (e.g., density, setbacks, open space requirements);
(3) A clear statement of which Comprehensive Clan goals, policies and/or objectives and which Land Development Code was in effect at the time of the filing of the application, the applicant is vested from;
(4) A clear statement to the applicant that construction must continue in good faith and meet all construction deadlines contained in Chapter 6 or the vested rights determination will expire and any and all rights acquired under the determination will be forfeited; and
(5) Notwithstanding Chapter 6, a vested rights final order will expire in five years with no possibility of extension.

(b) The vested rights determination shall be limited to rights acquired prior to adoption of the Comprehensive Plan and Land Development Code in effect at the time of the filing of the vested rights application, but after adoption of the 1986 Comprehensive Plan (unless a prior, valid and unexpired vested rights determination was obtained under the 1986 Comprehensive Plan or section 102-134 et seq.). The vested rights determination shall vest only that development specifically and expressly contemplated by a valid, unexpired official act of the county.

Secs. 102-138—102-157. Reserved.

ARTICLE V. AMENDMENTS

Sec. 102-158. Amendments to the Land Development Code, Land Use District Map, and Future Land Use Map.

(a) *Purpose*. The purpose of this article is to provide a means for changing the text of this Land Development Code, which also includes changes to the land use (zoning) district map and overlay district maps. It is also intended to add to the statutory procedures and requirements for changing the future land use map (FLUM) at the transmittal stage. The process for changing the text of the Comprehensive Plan shall follow the process established Chapter 163, Part II, Florida Statutes, and shall require a Concept Meeting as detailed in subsection (d)(3) of this section, and shall provide for community participation as specified in Section 102-159(b). This article is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, nor to permit an adverse change in community character, analyzed in the Technical Document (data and analysis), but only to make necessary adjustments in light of changed conditions or incorrect assumptions or determinations as determined by the findings of the BOCC. In determining whether to grant a requested amendment to the text of this Land Development Code, or land use (zoning) district map, or overlay map, the BOCC shall consider, in addition to the factors set forth in this article, the consistency of the proposed amendment with the provisions and intent of the comprehensive plan and consistency with the principles for guiding development in Section 380.0552, F.S.

(b) *Authority*. The BOCC may amend the text of this Land Development Code upon compliance with the provisions of this article. Text amendments may be proposed by the BOCC, the Planning Commission, the Planning Director, a private applicant, or the owner or other person having a contractual interest in property to be affected by a proposed property-specific text amendment. Land use (zoning) district map or FLUM amendments may be proposed by the BOCC, the Planning Commission, the Planning Director or the owner or other person having a contractual interest in property to be affected by a proposed map amendment. The Planning Director shall have the responsibility to establish the format as approved by the BOCC by which applications can be submitted and shall have the authority to process only those which are presented on a complete application. Applications deemed incomplete or insufficient shall be returned within 30 days to the applicant for correction and re-submittal.

(c) *Timing*. Applications for map and text amendments shall be accepted at any time. The Planning Director or his or her designee shall review and process the map and text amendment applications as they are received, require community participation pursuant to Section 102-159, and pass them on to the Development Review Committee and the Planning Commission for recommendation and final approval by the BOCC.

(d) Procedures.

(1) *Text Amendment Proposals by BOCC, Planning Commission, Planning Director, or a private applicant.* Private applicants shall be required to file an application with the Planning Director accompanied by a nonrefundable application fee as established

from time to time by the BOCC to defray the actual cost of processing the application. Proposals for text amendments shall be transmitted to the Planning and Environmental Resources Department. After receipt, the Planning Director and his or her staff shall review the proposed amendment and present it with a recommendation of approval or denial to the Development Review Committee for review and comment. Staff shall make a recommendation to the Planning Commission.

(2) *Map Amendment Proposals by affected landowners.* Any landowner or other person having a contractual interest in property desiring to petition the BOCC for an amendment to the land use (zoning) district map, overlay district map or FLUM shall be required to file an application with the Planning Director accompanied by a nonrefundable application fee as established from time to time by the BOCC to defray the actual cost of processing the application. After receipt, the Planning Director and his or her staff shall review the proposed amendment and present it with a recommendation of approval or denial to the Development Review Committee for review and comment. Staff shall make a recommendation to the Planning Commission.

(3) *Concept Meeting.* Private applicants submitting an application for an amendment to the text of the Land Development Code or Comprehensive Plan shall participate in a concept meeting with the Planning and Environmental Resources Department to discuss the proposed amendment. The concept meeting shall be scheduled by department staff once the application is determined to be complete. As part of this concept meeting, planning staff will identify whether or not the proposed text amendment will have a county-wide impact.

(4) *Community Participation.* The following types of amendments addressed under this section shall provide for community participation as specified in Section 102-159:

a. Applicants requesting a Land Use District (Zoning) Map amendment, Land Use District (Zoning) Map Overlay amendment, or Future Land Use Map amendment;

b. Proposals by the County or a private applicant to amend the text of the Land Development Code or Comprehensive Plan, with a county-wide impact, as determined by the concept meeting in subsection (d)(3), above.

(5) *Public hearing(s).* The Planning Commission and the BOCC shall each hold at least one public hearing on a proposed amendment to the text of the comprehensive plan or land development code or to the land use (zoning) district map or overlay district map or FLUM at the transmittal stage. The BOCC shall hold at least one additional public hearing for the adoption of a FLUM and/or text amendment of the comprehensive plan.

a. *Advertised notice*. Advertised notice of the public hearings for a proposed amendment to the text of the land development code, the land use (zoning) district map, overlay district map and the transmittal of the FLUM change shall be provided as required by section 110-5 of this Land Development Code.

b. *Mailed notice*. Notice of changes to the land use (zoning) district map, overlay district map and FLUM shall be mailed to owners within 600 feet of the affected property 15 days prior to the required hearing before the Planning Commission and 30 days before the required hearing before the BOCC for the land use (zoning) district map amendment and the FLUM at the transmittal stage.

c. *Posting of notice*. Posting of notice shall be made in accordance with the requirements of section 110-5 for land use (zoning) district map amendments, overlay district map, FLUM amendments, and property-specific text amendments.

d. *Other notice*. Notice of all public hearings shall be posted on the Monroe County Website as soon as is practical. Failure to post notice on the Monroe County Website shall not constitute grounds for the cancellation of any public hearing nor shall it constitute grounds for the cancellation of any action taken by the Planning Commission or the BOCC at such a meeting.

(6) *Action by Planning Commission.* The Planning Commission shall review the application, the reports and recommendations of the Planning and Environmental Resources Department, the comments of the Development Review Committee, and the testimony given at the public hearing, and shall submit its recommendations and findings to the BOCC.

(7) *Action by BOCC following public hearing(s).*

a. The BOCC shall consider the reports and recommendation of the Planning Commission, Planning and Environmental Resources Department staff, and the testimony given at the public hearings.

b. The BOCC may consider the adoption of an ordinance enacting the proposed map and text amendments to this Land Development Code based on one or more of the following factors:

1. Changed projections (e.g., regarding public service needs) from those on which the existing text or boundary was based;
2. Changed assumptions (e.g., regarding demographic trends) from those on which the existing text or boundary was based;
3. Data errors, including errors in mapping, vegetative types and natural features which contributed to the application of the existing text or boundary;
4. New issues which arose after the application of the existing text or boundary;
5. Recognition of a need for additional detail or comprehensiveness;
6. Data updates; or
7. Consistency with the Comprehensive Plan and the principles for guiding development as defined in Section 380.0552, Florida Statutes.

c. For text amendments to the Comprehensive Plan and FLUM amendments, the BOCC must also consider the analyses identified in Chapter 163, Florida Statutes and must find that the amendment is consistent with the principles for guiding development as defined in Section 380.0552, Florida Statutes.

d. In no event shall an amendment be approved which will result in an adverse change in community character to the sub-area which a proposed amendment affects or to any area in accordance with a Livable CommuniKeys master plan pursuant to findings of the BOCC.

(8) *Protest procedure.*

a. A written protest concerning an application for an amendment to the land use (zoning) district map or a FLUM amendment at the transmittal stage may be filed before the BOCC hearing by the owners of no less than 20 percent of the area of the land to be affected. Protests concerning a FLUM amendment may be made only at the transmittal hearing. In the event of a written protest against such amendment by owners of 20 percent of the affected property, where the signatures and protest are found to be true and accurate, the amendment shall not become effective except by the favorable vote of four members of the BOCC. Rounding up of decimals and percentages shall not be permitted.

b. A written protest concerning an application for an amendment to the land use (zoning) district map or a FLUM amendment at the transmittal stage may be filed by ten percent of the owners of land within 600 feet of the affected property. Protests concerning a FLUM amendment may be made only at the transmittal hearing. In the event of a written protest of ten percent of the owners within 600 feet of the affected property, the amendment shall not become effective except by the favorable vote of four members of the BOCC. In calculating whether a sufficient number of protests have been received to trigger the requirement for a supermajority vote, the number of protests must meet or exceed the ten percent threshold without resorting to rounding up.

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

d. The originals of the written protests must be filed with the clerk of the BOCC no later than the fifth working day before the day of the first county commission meeting at which the public hearing on the FLUM transmittal or land use (zoning) map amendment will be heard. Upon receipt of the protest(s), the clerk shall furnish a copy to the county attorney, the county administrator, and to the

applicant requesting the amendment. No further protests will be accepted by the clerk or the BOCC.

e. The BOCC shall not vote until the signatures, ownership, and protests have been verified by the Planning and Environmental Resources Department and County Attorney using information from the property appraiser and the official records of Monroe County. Every reasonable means shall be used by county staff to resolve the validity of the protest by the time of the public hearing, but if this cannot be accomplished the BOCC shall continue the item. If the time requirements of the Florida Statutes for transmittals cannot be met, the proposed FLUM amendment shall be held over until the next date for transmittal.

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

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

(9) *Majority of BOCC.* Except as provided in paragraph (d)(6) above, the BOCC may adopt the proposed amendment, or the proposed amendment as modified, by not less than a majority of its total membership.

(e) *Typographical or drafting errors.* Amendments to the text to correct typographical or drafting errors may be adopted by the BOCC without posted notice or public hearing at any regular meeting. As long as the county is within an area of critical state concern, notice of such amendments shall be transmitted to the State Land Planning Agency within 30 days.

Sec. 102-159. Community Participation

(a) *Map Amendments.* In addition to the public hearings required by Section 102-158, applicants requesting a Land Use District (Zoning) Map, Land Use District (Zoning) Map Overlay District or Future Land Use Map (FLUM) amendment shall provide for public participation through a community meeting.

(1) *Community Meeting*. The applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings are to be held on a weekday evening at a location close to the project site, between 45 -120 days prior to any of the public hearings required in Section 102-158.

(2) *Posting of notice.* The notice shall include the date, time and place of the community meeting, the address of the site and a description of the site, reference to the closest mile marker, and a summary of the proposal to be considered. At least 15 days prior to the community meeting, applicants shall post the property that is the subject of the map amendment with a waterproof signs(s) provided by the Planning and Environmental Resources Department which is so located that the notice shall be

easily visible from all public streets and public ways abutting the property. The applicant shall remove the posted notice within ten days after completion of the community meeting.

(3) *Mailing of notice*. At least 15 days prior to the community meeting, notice of the community meeting shall be mailed by the county to all owners of real property located within 600 feet of the property that is the subject of the map amendment, including any residents of the parcel proposed for map amendment. A list of such owners, as shown by the latest available records in the Monroe County Property Appraiser Office, shall be provided by the applicant with an application for development approval.

(4) *Publication of notice*. At least 15 days in advance of the community meeting, notice of the community meeting shall be provided as follows:

a. *Newspaper publication*: Notice of the community meeting shall be published in the non-legal section of a local newspaper of general paid circulation in Monroe County. The newspaper shall be of general interest and readership in the community. The advertisement shall appear in a newspaper that is published five days a week. The advertisement shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper and the headline in the advertisement shall be in a type no smaller than 18 point; and

b. Website and Social Media: The applicant shall coordinate with the County to assure the meeting is posted to the County's website and social media platforms.

(5) *Noticing and Advertising Costs*. The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

(6) The community meeting shall be facilitated by a representative from the Monroe County Planning and Environmental Resources Department and the applicant shall be present at the meeting.

(b) *Text Amendments to the Land Development Code and/or the Comprehensive Plan with County-wide Impact.* In addition to any required public hearings, proposals by the County or a private applicant to amend the text of the LDC and/or the Comprehensive Plan, shall provide for community participation through the following:

(1) *Determination of County-Wide Impact.* Private applicants submitting an application for an amendment to the text of the Land Development Code and/or the Comprehensive Plan shall participate in a concept meeting with the Planning and Environmental Resources Department, as indicated in Section 102-158(d)(3), to discuss the proposed amendment. The concept meeting shall be scheduled by department staff once the application is determined to be complete. As part of this concept meeting, department staff will identify whether or not the proposed text amendment will have a county-wide impact. For amendments proposed by the

County, a concept meeting is not required, and the Planning Director shall determine whether the amendment will have a county-wide impact.

(2) *BOCC Impact Meeting*. Private proposals to amend the text of the Land Development Code and/or Comprehensive Plan shall require a public meeting with the Board of County Commissioners ("Impact Meeting") prior to the application proceeding to the DRC for review. The applicant shall coordinate with the Planning Director regarding the date and time of the Impact Meeting; however, all Impact Meetings shall be held in Marathon.

a. *Publication of notice.* At least 15 days in advance of the Impact Meeting, notice of the meeting shall be provided as follows:

1. Newspaper publication: Notice of the Impact Meeting shall be published in the non-legal section of a local newspaper of general paid circulation in Monroe County. The newspaper shall be of general interest and readership in the community. The advertisement shall appear in a newspaper that is published five days a week. The advertisement shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper and the headline in the advertisement shall be in a type no smaller than 18 point; and
2. Website and Social Media: The applicant shall coordinate with the County to assure the Impact Meeting is posted to the County's website and social media platforms.

b. *Noticing and Advertising Costs.* The applicant shall pay the cost of the public notice and advertising for the Impact Meeting and provide proof of proper notice to the Planning Director.

c. During the Impact Meeting, County staff will identify, in writing, the county-wide impacts of the proposed amendment based upon the results of the concept meeting in Section 102-159(b)(1). The Impact Meeting is not to be a public hearing (the BOCC will not vote on the proposal), but a public meeting during which the BOCC may offer their initial opinions and the public may have input on the proposed amendment.

(3) *Community Meeting*. Proposals by the County or a private applicant to amend the text of the Land Development Code and/or Comprehensive Plan, with a county-wide impact, shall require a community meeting.

a. A private applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings shall be held on a weekday evening, at least three (3) months prior to any of the public hearings required in Section 102-158 or by Sec. 163.3184, F.S. (for comp plan).

b. *Publication of notice*. At least 15 days in advance of the community meeting, notice of the community meeting shall be provided as follows:

1. Newspaper publication: Notice of the community meeting shall be published in the non-legal section of a local newspaper of general paid circulation in Monroe County. The newspaper shall be of general interest and readership in the community. The advertisement shall appear in a newspaper that is published five days a week. The advertisement shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper and the headline in the advertisement shall be in a type no smaller than 18 point; and
2. Website and Social Media: The applicant shall coordinate with the County to assure the community meeting is posted to the County's website and social media platforms. Failure to post notice on the Monroe County official website shall not constitute grounds for the cancellation of any public meeting.

c. *Noticing and Advertising Costs.* The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

d. The community meeting shall be facilitated by a representative from the Monroe County Planning and Environmental Resources Department and the applicant shall be present at the meeting.

Sec. 102-160. Amendments in Progress.

(a) When revisions are being considered concerning the Land Development Code or the Comprehensive Plan, or any portions thereof, the County may take legislative action to delay the approval of applications that include the potential revisions' subject matter. The delay shall be for such time as deemed necessary by the BOCC, not to exceed 365 days or until the Land Development Code or Comprehensive Plan change is fully effectuated.

(1) Upon request of the BOCC, a Resolution shall be brought before the BOCC to direct County staff to process an Ordinance to defer potential approval of the subject applications. If the Resolution is approved by the BOCC, County staff will then draft and present to the BOCC a relevant Ordinance. The Ordinance shall require at least one public hearing and if called for by statute or other Ordinance, two public hearings.

(2) County staff may accept applications prior to the Ordinance being formally adopted; however, such applications will not be processed for approval until such time as set forth in the relevant Resolution or Ordinance. The adoption of any such Resolution or Ordinance is not to be considered a denial or refusal of an application, but rather a deferral of consideration until such time as set forth in the Resolution and Ordinance.

Secs. 102-161–102-184. Reserved.

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ARTICLE VI. APPEALS AND VARIANCES

DIVISION 1. GENERALLY

Sec. 102-185. Appeals.

(a) *Authority.* The Planning Commission shall have the authority to hear and decide appeals from any decision, determination or interpretation by any administrative official with respect to the provisions of this Land Development Code and the standards and procedures hereinafter set forth, except for appeals from actions by the Historic Preservation Commission and appeals from administrative actions regarding the floodplain management provisions of this Land Development Code. Appeals from actions by the Historic Preservation Commission shall be heard by the Division of Administrative Hearings (DOAH), pursuant to Section 135-9. Appeals from administrative actions regarding the floodplain management provisions of this Land Development Code shall be heard by DOAH, pursuant to Section 122-9.

(b) *Initiation.* An appeal may be initiated by an owner, applicant, adjacent property owner, any aggrieved or adversely affected person, as defined by F.S. Section 163.3215(2), or any resident or real property owner from any order, decision, determination or interpretation by any administrative official with respect to the provisions of this Land Development Code.

(c) *Procedures.* A notice of appeal in the form prescribed by the Planning Director must be filed with the County Administrator and with the office or department rendering the decision, determination or interpretation within 30 calendar days of the decision. Failure to file such appeal shall constitute a waiver of any rights under this Land Development Code to appeal any decision, interpretation or determination made by an administrative official. Such notice shall be accompanied by the names and addresses of the owner, applicant, property owner, and adjacent property owners. The filing of such notice of appeal will require the administrative official whose decision is appealed to forward to the Planning Commission any and all records concerning the subject matter of the appeal and to send written notice of the appeal to the owner, applicant, property owner, and adjacent property owners, if different from the person filing the appeal, within 15 calendar days of receipt of the notice of appeal.

(d) *Effect of filing an appeal.* The filing of a notice of appeal shall stay all permit activity and any proceedings in furtherance of the action appealed unless the administrative official rendering such decision, determination or interpretation certifies in writing to the Planning Commission and the applicant that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further permit activity and any proceedings. The Planning Commission shall review such certification and grant or deny a stay of the proceedings.

(e) *Action of the Planning Commission.* The Planning Commission shall consider the appeal at a duly advertised public hearing following receipt of all records concerning the subject matter of the appeal. Any person entitled to initiate an appeal may, along with county staff and counsel, have an opportunity to address the Planning Commission at that hearing and all parties to the appeal shall have the opportunity to present evidence and create a record

before the Planning Commission. Any appeals before the hearing officer shall be based upon and restricted to the record.

(f) *Appeal to hearing officer*. Any person participating as an appellant or appellee at the hearing described in subsection (e) of this section may request an appeal of the decision of the Planning Commission, under Chapter 102, Article VI, Division 2 by filing the notice required by that article within 30 days after the date of the written decision of the Planning Commission.

Sec. 102-186. Variances and Waivers Granted by the Planning Director.

(a) *Purpose*. The purpose of this section is to establish authority, procedures, and standards for the granting of variances and waivers from certain requirements of this Land Development Code, as specified in this section.

(b) *Authority and scope of authority*. The Planning Director is authorized to grant the following variances and waivers according to the standards of subsections (f), (g) and (h) of this section:

(1) For variances pursuant to subsection (f) of this section, reduction of front or rear yard non-shoreline setback requirements, as provided in chapter 131, by up to ten (10) feet; and reduction of non-shoreline side yard setback requirements, as provided in chapter 131, by up to five (5) feet ;

(2) For front yard setback waivers pursuant to subsection (g) of this section, reduction of the front yard non-shoreline setback requirements in Chapter 131 by up to ten (10) feet;

(3) For special accessibility setback variances pursuant to subsection (h) of this section, reduction in the front, rear, or side yard non-shoreline setback requirements in chapter 131, by up to the amount necessary to facilitate the accessibility-related development;

(4) Reduction in the off-street parking requirements in chapter 114, article III, by no more than twenty (20) percent;

(5) Reduction in the bufferyard width requirements for class C, D, E, and F district boundaries, major streets, and scenic corridors in chapter 114, article V by no more than ten (10) percent;

(6) Reduction in the total area of landscaping required for off-street parking and loading in chapter 114, article III, by no more than ten (10) percent; and

(7) Reduction in the loading/unloading space dimensional requirements in chapter 114, article III.

(c) *Application*. An application for a variance or waiver under this section shall be submitted to the Planning Director on a form approved by the Planning Director accompanied by a nonrefundable application fee as established from time to time by the BOCC to defray the actual cost of processing the application.

(d) *Procedures*. The Planning Director shall normally complete his review of the entire application and render a proposed decision within 30 days of receipt of a complete application.

(e) *Decision*. The Planning Director's decision shall be in writing. A variance or special accessibility waiver shall only be granted if all of the standards in subsection (f) or (g) of this section, respectively, are met.

(f) *Variances*. The Planning Director has the authority to grant a variance as described in (b)(1),(4),(5),(6), and (7) of this section, with or without conditions, if and only if the applicant demonstrates that all of the following standards are met:

(1) The applicant shall demonstrate a showing of good and sufficient cause for the requested variance;
(2) Failure to grant the variance would result in exceptional hardship to the applicant;
(3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
(4) Property has unique or peculiar circumstances;
(5) Granting the variance will not give the applicant any special privilege denied to another property owner of the other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;
(6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his family;
(7) Granting the variance is not based on the domestic difficulties of the applicant or his family; and
(8) The variance is the minimum necessary to provide relief to the applicant.

(g) *Front yard setback waivers*. The Planning Director has the authority to grant a waiver reducing a front yard non-shoreline setback requirement by up to ten (10) feet, with or without conditions, if and only if the applicant demonstrates that all of the following standards are met:

(1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 101-1, along the road that is subject to the front yard setback waiver application is less than the land use (zoning) district standard, as established in section 131-1;
(2) The waiver will not result in a setback that is less than the existing front yard setback to the further most projection of the main building that is closest to the front lot line on a contiguous lot on either side of the subject property; and
(3) At least one contiguous property along the road that is subject to the front yard setback waiver application shall be developed at the time of application. In the event that all contiguous parcels on either side of the subject property along the road that is subject to the front yard setback waiver application are vacant, the property shall not be eligible for a front yard setback waiver.

(h) *Special Accessibility Setback Variances*. The Planning Director has the authority to grant a variance reducing a front, rear or side yard non-shoreline setback requirement for an elevator, lift or ramp specifically required to allow access of a disabled household member to the

subject dwelling unit, or to allow accessibility upgrades to a lawfully existing nonresidential use/structure, up to the amount necessary to reasonably facilitate the accessibility-related development as determined by the Planning Director upon review of the application, if and only if the applicant demonstrates that the following standards are met:

(1) The applicant shall demonstrate a showing of good and sufficient cause;
(2) Failure to grant the variance would result in exceptional hardship to the applicant;
(3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
(4) The variance is the minimum necessary to provide relief to the applicant.

(i) *Public notification of proposed approval.* After determining that an application for a variance or a waiver complies with the requirements of this section, the Planning Director shall provide written notice of proposed approval and require posting as follows:

(1) The Planning Director shall provide written notice by regular mail to owners of real property located within 600 feet of the property that is the subject of the proposed variance or waiver.
(2) The applicant shall post the property of the proposed variance or waiver with a waterproof sign(s) prepared and provided by the Planning and Environmental Resources Department, which shall be posted in a manner to be easily visible from all public roads abutting the property. The property shall remain posted for no less than 30 consecutive calendar days beginning within five working days of the date that the application is deemed to be in compliance by the Planning Director.
(3) The notice and posting shall provide a brief description of the proposed variance or waiver and indicate where the public may examine the application. The cost of providing notice and posting shall be borne by the applicant.

(j) *Decision by the Planning Director.* After 30 calendar days of proper posting, review of all public responses to the variance or waiver application and upon a finding that the proposed variance or waiver and application have or have not complied with the requirements and standards of this section, the Planning Director shall issue a written variance decision.

(k) *Public hearing by the Planning Commission*. If requested in writing by the applicant, or an adversely affected owner or resident of real property located in the county during the required 30 calendar days of posting, a public hearing shall be scheduled on the application for a variance or waiver after the 30th day of posting. All costs of the public hearing shall be the responsibility of the applicant for the variance or waiver. The public hearing shall be conducted in accordance with section 110-5 and provisions of section 102-187.

(l) *Development under approved variances and waivers.* The granting of a setback variance or waiver by the Planning Director is based on the design and placement of the structure(s) as shown on the approved site plans and does not reduce or waive any other required setbacks for any future structures or additions. Work not specified or alterations to the site plan may not be carried out without additional approval(s).

Sec. 102-187. Variances Granted by the Planning Commission.

(a) *Purpose*. The purpose of this section is to establish authority, procedures, and standards for the granting of variances from certain provisions of this Land Development Code, as specified in this section.

(b) *Authority and scope of authority*. The Planning Commission is authorized to grant the following variances according to the standards of subsection (d) of this section:

(1) Front, side, and rear yard non-shoreline setback requirements in chapter 131;
(2) Bufferyard requirements in chapter 114, article V;
(3) Off-street parking and loading space requirements in chapter 114, article III;
(4) Landscaping requirements in chapter 114, article IV;
(5) Access standards in chapter 114, article VII; and
(6) Fence height requirements in chapter 114, article I.

(c) *Application and procedures*. An application for a variance shall be submitted to the Planning Director. The Planning Director shall review the entire application and all public responses thereto and prepare a staff report with recommendations for the Planning Commission. The variance application shall be heard at a regularly scheduled meeting of the Planning Commission. Notice, posting and hearing requirements shall be in accordance with section 110-5.

(d) *Standards*. The Planning Commission has the authority to grant a variance to the standards described in (b)(1) through (6), with or without conditions, if and only if the applicant demonstrates that all of the following standards are met:

(1) The applicant shall demonstrate a showing of good and sufficient cause;
(2) Failure to grant the variance would result in exceptional hardship to the applicant;
(3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
(4) Property has unique or peculiar circumstances;
(5) Granting the variance will not give the applicant any special privilege denied to another property owner in the immediate vicinity;
(6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of his family;
(7) Granting the variance is not based on the domestic difficulties of the applicant or his family; and
(8) The variance is the minimum necessary to provide relief to the applicant.

(f) *Decision by the Planning Commission*. The Planning Commission's decision shall be in writing by Resolution.

(g) *Development under approved Planning Commission variances*. The granting of a setback variance by the Planning Commission is based on the design and placement of the structure(s) as shown on the approved site plans and does not reduce or waive any other

required setbacks for any future structures or additions. Work not specified or alterations to the site plan may not be carried out without additional approval(s).

Secs. 102-188—102-212. Reserved.

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DIVISION 2. HEARING OFFICERS

Sec. 102-213. Jurisdiction.

Hearing officers shall review by appeal Planning Commission action when authorized by the county Land Development Code.

Sec. 102-214. Invocation of jurisdiction.

The jurisdiction of the hearing officer under this article shall be invoked by filing a copy of the notice of the appeal and the filing fee with the planning commission coordinator. The BOCC shall establish a reasonable filing fee. The form of the notice shall be prescribed by the Planning Director.

Sec. 102-215. Preparation of the record.

Within 30 days of filing the notice, the planning commission coordinator shall prepare the record prescribed in section 102-216 and serve copies of the index of the record on all parties. Within 30 days of the filing of the notice, the planning commission coordinator shall transmit the record to the hearing officer and copies to all parties. The BOCC may establish reasonable fees for copies furnished the parties.

Sec. 102-216. Contents of the Record.

(a) The record in a case governed by this article shall consist only of:

(1) All applications, memoranda, or data submitted to the Planning Commission;
(2) Evidence received or considered by the Planning Commission;
(3) Questions and proffers of proof, objections, and rulings thereon, presented to the planning commission;
(4) The transcript of the hearing before the Planning Commission transcribed by a certified court reporter at the expense of the appellant and furnished to the planning commission coordinator; and
(5) The order of the Planning Commission.

(b) The planning commission coordinator shall prepare the record in the following fashion:

(1) Upon receipt of the transcript from the court reporter, each page shall be consecutively numbered. The transcript shall be securely bound in consecutively numbered volumes not to exceed 200 pages each.
(2) The remainder of the record, including any supplements, shall be consecutively numbered and securely bound in volumes not to exceed 200 pages.
(3) The planning commission coordinator shall prepare a complete index to the record.

(c) The burden to ensure that the record is prepared and transmitted to the hearing officer and the parties shall be on the appellant.
(d) If there is an error or omission in the record, the parties by stipulation, the Planning Commission, or the hearing officer may correct the record. If the hearing officer finds the record incomplete, he or she shall direct a party to supply the omitted parts of the record. No case shall be decided because the record is incomplete until an opportunity to supplement the record has been given.
(e) The record shall be returned to the planning commission coordinator after the disposition of the case by the hearing officer.

Sec. 102-217. Contents of the Briefs.

(a) The appellant's initial brief shall be filed with the hearing officer and served on the parties within 50 days of the filing of the notice. The appellee's answer brief shall be filed and served within 20 days of service of the initial brief. The appellant's reply brief, if any, shall be filed and served within ten days of service of the answer brief.
(b) The contents of the initial brief shall include:

(1) A table of contents listing the issues presented for review, with reference to pages;
(2) A table of citations with cases listed alphabetically, statutes and other authorities and the pages of the brief on which each citation appears;
(3) A statement of the case and of the facts, which shall include the nature of the case, the course of the proceedings, and the disposition in the lower tribunal. References to the appropriate pages of the record or transcript shall be made;
(4) A summary of argument, suitably paragraphed, condensing succinctly, accurately, and clearly the argument actually made in the body of the brief;
(5) Argument with regard to each issue; and
(6) A conclusion, of not more than one page, setting forth the precise relief sought.

(c) The contents of the answer brief shall be prepared in the same manner as the initial brief provided the statement of the case and facts shall be omitted unless there are areas of disagreement, which should be clearly specified.
(d) Contents of the reply brief shall contain argument in response and rebuttal to argument presented in the answer brief.
(e) The initial and answer briefs shall not exceed 50 pages in length. Reply briefs shall not exceed 15 pages in length. The table of contents and the citation of authorities shall be excluded from the computation.

Sec. 102-218. Oral Argument and the Contents and Effect of the Hearing Officer's Order.

(a) Within 60 days of the filing of the briefs and the record, the hearing officer shall schedule the case for oral argument.
(b) Within 45 days of oral argument, the hearing officer shall render an order that may affirm, reverse or modify the order of the Planning Commission. The hearing officer's order may

reject or modify any conclusion of law or interpretation of the county Land Development Code or Comprehensive Plan in the Planning Commission's order, whether stated in the order or necessarily implicit in the Planning Commission's determination, but he may not reject or modify any findings of fact unless he first determines from a review of the complete record, and states with particularity in his order, that the findings of fact were not based upon competent substantial evidence or that the proceeding before the Planning Commission on which the findings were based did not comply with the essential requirements of law.

(c) The hearing officer's final order shall be the final administrative action of the county.

Sec. 102-219. Motions and Sanctions.

Upon the application of any party, the hearing officer may grant relief under this article or impose sanctions for the failure of a party to comply with this article, including the striking of untimely, irrelevant or scandalous portions of a brief or the record or the dismissal of an appeal, as the interests of justice may require. An application for an order seeking sanctions for failure of a party to comply with this article or for other relief under this article shall be made by filing a motion stating the sanction or relief sought and the basis therefor with the hearing officer and serving a copy on the opposing party. A motion for an extension of time shall, and other motions may, contain a certificate from the movant or his counsel that he has consulted the opposing parties or, if they have counsel, opposing counsel and that he is authorized to represent that they have no objection or that they will promptly file an objection. A party may file and serve one response to a motion within ten days of service of the motion. The service and filing of a motion shall not toll the time by which any act must be performed under this article unless so ordered by the hearing officer. Within 15 days of the filing of the motion or the response as appropriate, the hearing officer shall grant any sanction or relief as may be appropriate but shall not dismiss any appeal without affording the appellant at least one opportunity to correct the offending error.

Sec. 102-220. Automatic Stay of Order to be Reviewed.

The filing of an appeal under this article shall operate as an automatic stay on the effectiveness of any development order to be reviewed unless the stay is dissolved by the hearing officer upon the motion of a party showing that the interests of justice require such dissolution.

Chapter 103 - TEMPORARY HOUSING AND TEMPORARY USES

Sec. 103-1. Temporary housing.

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

Recreational vehicle (RV) means the same as that term is defined in F.S. § 320.01.

Temporary emergency housing means recreational vehicles (or similar approved sheltering units) used for temporary occupancy in response to natural or manmade disasters, including, but not limited to, hurricanes and tropical storms, where such RVs (or other approved sheltering units) are provided to residents or relief workers as part of emergency relief efforts.

Temporary non-emergency housing means RVs (or other approved sheltering units) used for temporary occupancy by employees in order to provide project site security for a long-term capital improvement project or to avoid delay in completing ongoing or future airport safety and capacity improvements.

(b) *Purpose.* It is the purpose of this section to provide regulations that allow for the relaxation of the use prohibitions in Chapter 130, Land Use Districts, and Chapter 138, Rate of Growth Restrictions (ROGO/NROGO), to:

(1) Provide regulatory authority to allow temporary emergency housing, not subject to the ROGO permit allocation system, for temporary occupancy by residents displaced by natural or manmade disaster damage or by relief workers involved in reconstruction activities following a natural or manmade disaster;
(2) Provide regulatory authority to allow temporary non-emergency housing, not subject to the ROGO permit allocation system, for temporary occupancy by workers undertaking a long-term capital improvement project to provide site security for the capital improvement project site or to avoid delay in completing airport safety and capacity improvements on county-owned airport properties.

(c) *Placement of temporary emergency housing on single family parcels.* Notwithstanding the provisions of Chapter 130, Land Use Districts, and Chapter 138, Rate of Growth Restrictions (ROGO/NROGO), temporary emergency housing may be placed on a single-family parcel for temporary occupancy by residents of the same parcel who have been displaced by natural or manmade disaster damage subject to the following conditions:

(1) The dwelling unit on the subject parcel is lawfully established and has incurred sufficient damage from the disaster to make the dwelling unit uninhabitable as determined by verifiable photographic evidence provided by the applicant to the

Building Department, and/or an inspection by an official from a federal or state governmental relief agency, the county Building Department or the County Code Compliance Department;

(2) A building permit must be issued within 90 days of placement of the temporary emergency housing for repair of damages caused by the casualty event to make the dwelling unit habitable;

(3) A separate, no-fee building permit must be issued for the placement of the temporary emergency housing, linked to the building permit issued for damage repair. The building permit shall require approval by the Building Official of the unit's siting location on the parcel and a department of health permit authorizing the connection of the unit to an on-site wastewater treatment and disposal system or to an existing community wastewater treatment system;

(4) Only one temporary emergency housing unit shall be placed per single family parcel; and

(5) The temporary emergency housing unit may remain on the property for a period not to exceed 180 days from the date of building permit issuance or until the final inspection or certificate of occupancy is issued on the repairs made to the dwelling unit, whichever comes first A single extension of up to an additional 180 days may be granted by the Building Official if he determines that good cause has been shown for the need for an extension and that the temporary emergency housing unit is adequately tied down and secured so as not to present an undue hazard to persons or property in a high-wind or flood event. Expiration of the building permit for damage repairs shall require immediate removal of the temporary emergency housing unit from the site. However, nothing in this section shall prevent the county or any state or federal authority to terminate without notice the authority to keep any temporary emergency housing units otherwise authorized under this section should it be deemed required for the public safety.

(d) *Placement of temporary emergency housing on nonresidential properties.* Notwithstanding the provisions of Chapter 130, Land Use Districts, and Chapter 138, Rate of Growth Restrictions (ROGO/NROGO), temporary emergency housing may be placed on a nonresidential or mixed-use property or on publicly-owned lands, excluding lands designated for conservation and resource protection for temporary occupancy by county residents displaced by natural or manmade disaster damage, subject to the following conditions:

(1) A no-fee building permit must be issued for the placement of the temporary emergency housing unit(s). The building permit shall require approval by the Building Official and the Planning Director of a site plan indicating the location of the temporary emergency housing unit(s) on the parcel, and a Department of Health permit authorizing the connection of the unit(s) to an on-site wastewater treatment and disposal system(s) or to an existing community wastewater treatment system; and

(2) The temporary emergency housing unit(s) may remain on the property for a period not to exceed 180 days from the date of building permit issuance. A single extension

of up to an additional 180 days may be granted by the Building Official if he determines that good cause has been shown for the need for the extension and that the temporary emergency housing unit is adequately tied down and secured so as not to present an undue hazard to persons or property in a high-wind or flood event. However, nothing in this section shall prevent the county or any state or federal authority to terminate without notice the authority to keep any temporary emergency housing units otherwise authorized under this section should it be deemed required for the public safety.

(e) *Placement of temporary emergency housing for emergency relief workers*. Notwithstanding the provisions of Chapter 130, Land Use Districts, and Chapter 138, Rate of Growth Restrictions (ROGO/NROGO), temporary emergency housing may be provided for temporary occupancy by emergency relief workers involved in reconstruction activities, subject to the following conditions:

(1) An emergency directive or resolution of the BOCC must be issued authorizing the placement and duration of the temporary emergency housing for relief workers;
(2) Placement of temporary emergency housing for relief workers must not impede or interfere with other emergency and recovery operations or public safety;
(3) Temporary recovery or reconstruction housing facilities shall ensure that temporary electrical and sewage lines do not constitute an attractive nuisance to children or homeless persons in the area (i.e., sufficient temporary fencing may be required by the Building Official);
(4) A no-fee building permit must be issued for the placement of the temporary emergency housing unit(s). The building permit shall require approval by the Building Official and the Planning Director of a site plan indicating the location of the temporary emergency housing unit(s) on the parcel, consistent with the BOCC resolution, and a Department of Health permit authorizing the connection of the unit(s) to an on-site wastewater treatment and disposal system(s) or to an existing community wastewater treatment system;
(5) Any required demolition or building permits for the related reconstruction activities must be issued within 90 days from the placement of the temporary emergency housing for relief workers;
(6) The temporary emergency housing unit(s) may remain on the site for a period not to exceed the duration specified by the BOCC resolution, and may only be extended at the discretion of the BOCC by an additional resolution. However, nothing in this section shall prevent the county or any state or federal authority to terminate without notice the authority to keep any temporary emergency housing unit otherwise authorized under this section should it be deemed required for the public safety;
(7) The only persons permitted to reside for any period in temporary emergency housing for relief workers are individuals who are gainfully employed on a fulltime basis in completing cleanup and reconstruction efforts following a natural or manmade disaster. All residents of temporary emergency housing for relief workers who were not permanent residents of the county prior to first occupying such housing facilities

will be required to evacuate in accordance with local evacuation orders. Residents of any temporary emergency housing for relief workers who were permanent residents of the county prior to first occupying such housing facilities may not remain in temporary emergency housing for relief workers during any period when a local evacuation order is in effect.

(f) *Placement of temporary non-emergency housing for contractors on county-owned airport properties.* Notwithstanding the provisions of Chapter 130, Land Use Districts, and Chapter 138, Rate of Growth Restrictions (ROGO/NROGO), temporary non-emergency housing may be placed on county-owned airport properties for temporary occupancy by contractors completing airport safety and capacity improvements subject to the following conditions:

(1) A building permit must be issued for placement of the temporary non-emergency housing unit(s), and linked to existing airport construction permits. The building permit shall require approval by the Building Official and the Planning Director of a site plan indicating the location of the temporary non-emergency housing unit(s) on the parcel, and a department of health permit authorizing the connection of the unit(s) to an on-site wastewater treatment and disposal system(s) or to an existing community wastewater treatment system. All units shall be adequately tied down;

(2) Placement of temporary non-emergency housing for airport construction purposes must not impede or interfere with aviation operations or safety and must conform to any applicable FAA regulations;

(3) Temporary non-emergency housing for airport construction purposes shall remain on the property for a period not to exceed 30 days from the date of completion of the related airport construction work, unless extended by resolution of the BOCC. However, nothing in this section shall prevent the county or any state or federal authority to terminate without notice the authority to keep any temporary non-emergency housing unit otherwise authorized under this section should it be deemed required for the public safety; and

(4) The only persons permitted to reside for any period in temporary non-emergency housing units for airport construction purposes are individuals who while in the county are actually gainfully employed on a fulltime basis in completing airport safety and capacity improvements at a county airport. All residents or occupants of temporary airport construction housing facilities must be required to timely evacuate in accordance with local evacuation orders.

(g) *Placement of temporary non-emergency housing to provide site security for capital improvement projects.* Notwithstanding the provisions of Chapter 130, Land Use Districts, and Chapter 138, Rate of Growth Restrictions (ROGO/NROGO), temporary non-emergency housing for temporary occupancy by workers undertaking a long-term capital improvement project may be provided in order to provide site security for the project site, subject to the following conditions:

(1) A resolution of the BOCC must be issued authorizing the placement of a temporary non-emergency housing unit for site security. The resolution shall specify the location (placement of the unit at the project site) and the duration of the temporary housing unit, not to exceed 180 days. No more than one temporary non-emergency housing unit shall be approved per project site. When considering such placement, the BOCC shall take into account the number of times a parcel has been used for temporary non-emergency housing purposes for capital improvement projects and shall consider compatibility, complications and other circumstances that may require a site to be utilized for more than 365 consecutive days and public comment.

(2) Placement of a temporary non-emergency housing unit for site security must not impede or interfere with public safety;

(3) The purpose of the temporary non-emergency housing unit shall be to provide security for the project site;

(4) A building permit must be issued for the placement of the temporary non-emergency housing unit for site security, linked to the building permits for the related construction activities (if applicable). The building permit shall require approval by the Building Official and the Planning Director of a site plan indicating the location of the temporary emergency housing unit on the parcel, consistent with the BOCC resolution, and a Department of Health permit authorizing the connection of the unit to an on-site wastewater treatment and disposal system or to an existing community wastewater treatment system;

(5) The temporary non-emergency housing unit for site security may remain on the site for a period not to exceed the duration specified by the BOCC resolution, and may only be extended at the discretion of the BOCC by an additional resolution. When considering an extension, the BOCC shall take into account the number of times a parcel has been used for temporary non-emergency housing purposes for capital improvement projects and shall consider compatibility, complications and other circumstances that may require a site to be utilized for more than 365 consecutive days and public comment. Nothing in this section shall prevent the county or any state or federal authority to terminate without notice the authority to keep any temporary non-emergency housing unit otherwise authorized under this section should it be deemed required for the public safety.

(6) The only persons permitted to reside for any period in temporary non-emergency housing for site security for a capital improvement project are individuals who are gainfully employed in completing the capital improvement project. All residents of temporary non-emergency housing for site security who were not permanent residents of the county prior to first occupying such housing facilities will be required to evacuate in accordance with local evacuation orders. Residents of any temporary non-emergency housing who were permanent residents of the county prior to first occupying such housing facilities may not remain in temporary non-emergency housing for site security during any period when a local evacuation order is in effect.

(h) No clearing or filling of environmentally sensitive lands may occur as a result of providing any type of temporary housing unit(s).

(i) For all permitted temporary housing, upon expiration of relevant approvals and timeframes expressly set forth in the relevant authorization, the temporary housing shall be removed.

Sec. 103-2 Temporary uses.

(a) *Applicability*. If not already provided for as a permitted use by the Land Development Code, a temporary use is a permitted use in any land use (zoning) district, provided it meets the criteria set forth in this section. This section shall not override or substitute for any other section of this Land Development Code that requires another type of permit, certification or approval.

(b) *Temporary uses, other than public assemblies and temporary construction staging areas*. Approval of a temporary use that is not defined as a *public assembly* in Section 101-1 or categorized as a *temporary construction staging area* pursuant to Section 6-3 shall be granted only if the following criteria are met:

(1) Prior to establishment of the temporary use, a special building permit approving the temporary use, and any associated temporary structures, shall be issued in accordance with this section and Section 6-112;

(2) No clearing or filling of environmentally sensitive lands shall occur to accommodate the temporary use;

(3) The temporary use shall not occur in any required setback or required parking area; and

(4) The temporary use shall be compatible with existing uses on surrounding properties, as determined by the Planning Director. If necessary, prior to issuance of a special building permit allowing the temporary use, the Planning Director may require a meeting with the applicant, the Planning Director (or his/her designee), Building Official (or his/her designee), the Sheriff (or his/her designee), the Fire Chief (or his/her designee), and/or a representative of the county Health Department to negotiate mutually satisfactory conditions under which the temporary use may be approved to avoid substantial harm to the public health or safety and to minimize or to avoid substantial harm to, or impairment of the normal use of, a public place or to avoid substantial harm to the environment. Depending on the nature and anticipated duration of the temporary use, as a condition of approval to the special building permit, the Planning Director and Building Official reserve the right to:

a. Require fencing, landscaping and/or other screening to limit potential visual and noise impacts of the temporary use on adjacent property owners; and

b. Require full compliance with the surface water management provisions provided in Chapter 114, article I and the bufferyard provisions provided in Chapter 114, article V.

(c) *Public assemblies*. A public assembly is a type of temporary use that is attended by members of the general public, with or without an admission charge, when the duration of the event is less than seven consecutive days and/or the anticipated daily attendance is

expected to exceed 250 persons. Approval of a public assembly shall be granted in accordance with the provisions set forth in Chapter 17, article II, Public Assembly Permits.

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Chapter 106 AREAS OF CRITICAL COUNTY CONCERN

Sec. 106-1. Purpose.

It is the purpose of this chapter to provide procedures and standards for designation of areas of critical county concern within the county that have special planning and regulatory needs.

Sec. 106-2. Standards for Designation of Areas of Critical County Concern.

Areas within the county may be designated areas of critical county concern if the BOCC determines that the proposed area is one of special environmental sensitivity, contains important historical or archaeological resources, is characterized by substantial capital improvement deficiencies, or provides significant redevelopment opportunities.

Sec. 106-3. Procedures for Designation.

Areas of critical county concern may be designated by the BOCC in accordance with the following procedures:

(a) A proposed designation may be initiated by the BOCC, the Planning Department, or any citizen. All proposed designations shall be accompanied by a boundary description and a narrative of the basis for such designation.

(b) All proposed designations shall be reviewed by the Planning Department and the development review committee and a recommendation shall be submitted to the Planning Commission. The Planning Commission shall conduct a public hearing on the proposed designation upon receipt of the recommendation of the Planning Department in accordance with the provisions of Chapter 110. Upon conclusion of the public hearing, the Planning Commission shall submit its recommendation for the proposed designation to the BOCC.

(c) The BOCC shall consider the recommendation of the Planning Commission and such additional testimony and evidence which may be presented to it, and adopt or reject the designation with or without modifications. Such designation shall include specific findings regarding the purpose of the designation, the time schedule for the planning effort to be implemented, identification of the sources of funding for the planning and potential implementing mechanisms, delineation of a work program, a schedule for the work program and the appointment of an advisory committee, if appropriate.

Sec. 106-4. Threshold Designations.

(a) When the Planning Department's biennial report, prepared pursuant to Section 114-2(b), identifies areas with specific service deficiencies, these areas may be designated as areas of critical county concern (ACCC) in accordance with Section 106-3. As part of this designation, the Planning Department shall formulate a work program and management policies for each designation. Threshold designation areas must meet all requirements of this chapter. While the designation of an area of critical county concern as a result of a

threshold designation does not prohibit development permitting, such designation is intended to focus planning efforts on areas with marginally adequate public facilities and to ensure that development approvals are conditioned so as to minimize the potential of reaching inadequate facilities levels of service which would preclude further development. Areas of the county that meet the following criteria in the annual report may be designated ACCC:

(1) Areas within three miles of any section of U.S. 1, State Road 905 or any secondary road that is operating at level of service D on a peak-hour basis; and
(2) Areas within 25 miles of a solid waste site with a minimum expected life capacity of less than five years.

(b) Additional thresholds for designations may be proposed by the Planning Director. A threshold ACCC may be repealed only after the deficiencies that caused the designation no longer exist.

Sec. 106-5. Effect of Designation of Area of Critical County Concern.

Upon designation of an area of the county under the provisions of this chapter, except for threshold designations, no person shall carry out any development other than development which is specifically authorized in an interim regulation which is included in the designation of the area of critical county concern unless a development impact report demonstrating that the proposed development will have no adverse impact on the values identified as the basis for designation of the area of critical county concern is approved by the BOCC as part of a major conditional use.

Sec. 106-6. Development Review in an Area of Critical County Concern.

All development in a designated area of critical county concern shall be considered as a conditional use.

Sec. 106-7. Development Impact Report.

A development impact report shall contain a detailed assessment of a proposed development, including the following:

(a) A traffic impact statement delineating the trips generated by the proposed development, the distribution and lengths of generated trips and the level of service that will result on all affected roadways;
(b) An environmental impact statement delineating the effect of the proposed development on the number and distribution of plants and animals on the parcel proposed for development;
(c) A fiscal impact statement describing the costs and benefits from the construction and operation of the proposed development; and

(d) An economic impact statement describing the economic hardship that would result from requiring the applicant to await the completion of the work program for the area of critical county concern.

Sec. 106-8. North Key Largo Area of Critical County Concern.

(a) Established.

The North Key Largo area of critical county concern is hereby established for that portion of Key Largo located between the junction of State Road 905 and U.S. Route 1 and the Dade County boundary at Angel Fish Creek.

(b) Purpose.

The North Key Largo area of critical county concern is established for the purpose of reconciling the reasonable investment-backed development expectations of North Key Largo landowners with the need to preserve the habitat of four species of animals that are listed as endangered under the Endangered Species Act, 16 USC 1531-1543; the American Crocodile (Crododylus acutus), the Key Largo Woodrat (Neotoma floridana smalli), the Key Largo Cotton Mouse (Peromyscus gossypinus allapaticola), and the Schaus Swallowtail Butterfly (Heraclides aristidemus ponceanus).

(c) Habitat conservation plan for North Key Largo.

A gubernatorial study committee established by Executive Order Number 84-157 is preparing a habitat conservation plan for North Key Largo that will be consistent with the principles established in subsection (d) of this section and is to be submitted to the county for consideration and adoption as a part of the Monroe County Comprehensive Plan.

(d) Principles for guiding the preparation of the habitat conservation plan.

The habitat conservation plan ("HCP") for North Key Largo shall be prepared in accordance with the following principles:

(1) At a minimum, the lands that are designated as conserved habitat within the North Key Largo area of critical county concern shall be preserved by the fee acquisition, use of transferable development rights or any other means that provides for the preservation of the lands in perpetuity.
(2) The lands designated for possible future development within the North Key Largo area of critical county concern may be suitable for on-site development.
(3) An intensive land acquisition effort, including at a minimum all conserved habitat within the North Key Largo area of critical county concern should be undertaken by the state. It may also be desirable for the state to acquire all or a part of the areas

designated for possible future development within the North Key Largo area of critical county concern.

(4) No development shall be carried out within the areas designated for possible future development within the North Key Largo area of critical county concern prior to August 1, 1988, in order to provide a reasonable period of time for a major land acquisition effort to be undertaken, except for possible minor exceptions for single-family dwellings units in existing improved subdivisions.

(5) Residential dwelling units shall be allocated on an equitable basis to all lands, including lands owned by the state in the North Key Largo area of critical county concern which lie outside of the Crocodile Lakes National Wildlife Refuse, between the Ocean Reef Club and the Port Bougainville Development of Regional Impact (DRI) on the basis of 3,500 residential units. The allocation shall first provide for existing legally vested rights, including improved subdivisions, and then allocate the remainder of the 3,500 units to undeveloped lands. It shall be assumed that the dwelling units allocated to lands currently in state ownership, or lands acquired in the future by the state, will not be developed and that therefore the number of dwelling units actually developed will be substantially less than the allocated number of dwelling units.

(6) No development within the areas designated for possible development shall be carried out unless and until a Section 10(a) incidental taking permit authorizing such development has been issued by the United States Secretary of the Interior and a comparable authorization has been granted by the state.

(e) Table of contents.

The habitat conservation plan shall contain the general topic areas and considerations set forth in the interim drafts of the table of contents and Chapters 4 and 5 of the interim drafts submitted by the study committee, hereby incorporated by reference, subject to further modifications and refinements.

(f) Applicability.

(1) All development within the North Key Largo area of critical county concern shall comply with each and every provision of this chapter and the HCP when adopted. In the event there is any conflict between the provisions of the HCP and the more general provisions of this chapter, the HCP shall control.

(2) On or before October 1, 1987, the BOCC shall consider and initiate adoption procedures for a Habitat Conservation Plan for the North Key Largo area of critical county concern; and no development shall be carried on any lands within the area of critical county concern prior to October 1, 1987, or the effective date of the HCP except for lands located within the Ocean Reef Club, the Angler's Club and the Port Bougainville and Garden Cove DRI's and subdivisions designated by the BOCC as Improved Subdivision (IS).

(3) The time period specified in Section 101-4(b)(3) shall not commence until August 1, 1988, for approved major development which would otherwise be entitled to proceed under the provisions of Section 101-4(b)(3) but which are prohibited from doing so under the terms of this subsection.

(4) No development permit shall be effective until the issuance of all required permits pertaining to endangered species, as required by the U.S. Fish and Wildlife Service and the state.

Sec. 106-9. Ohio Key Area of Critical County Concern.

(a) Established.

The Ohio Key area of critical county concern is hereby established for that portion of Ohio (Sunshine) Key that lies south of U.S. 1 described on Land Use District Map Number 10 of 21.

(b) Purpose.

The Ohio Key area of critical county concern is established for the purpose of reconciling the reasonable investment-backed expectations of the owners of Ohio Key with the habitat value and environmental sensitivity of the wetlands system on the Key that serves as a habitat for a variety of wading birds, including the Piping Plover, a species listed as threatened under the Federal Endangered Species Act.

(c) Regulations.

(1) Notwithstanding any other provision of this chapter, the Ohio Key area of critical concern may be developed with 20 recreational vehicle parking spaces or campsites and a bathhouse designed to serve the 20 spaces, provided that:

a. All development other than picnic tables, boardwalks and bird-watching blinds is restricted to the lands identified on the existing conditions map as 740.3;
b. The recreational vehicle parking spaces or campsites are set back at least 100 feet from the dwarf mangrove area shown on the existing conditions map;
c. The area that is developed for recreational vehicle parking spaces or campsites and a bathhouse is fenced so as to control access to the dwarf mangrove, disturbed beach and berm water areas within the Ohio Key area of critical county concern;
d. No motorized vehicles of any kind or any bicycle, except for maintenance vehicles, shall have access to or shall be used in the Ohio Key area of critical county concern except for that portion of the area designated as 740.3 on the existing conditions map;
e. Picnic tables are restricted to the areas designated as 740.3 or 740.4 on the existing conditions map;

f. No pets shall be allowed in the Ohio Key area of critical county concern;
g. The concrete refuse previously dumped on the land designated as 740.3 on the existing conditions map shall be removed or buried;
h. No dumping or filling shall be allowed in the Ohio Key area of critical county concern except for filling necessary to carry out the development of the campsites and bathhouse permitted by this subsection and to bury the concrete refuse previously dumped on the land designated as 740.3 on the existing conditions map;
i. All exotic invasive species of plant are removed from the land designated as 740.3 on the existing conditions map in the Ohio Key area of critical county concern;
j. No insecticide is sprayed or fogged in the Ohio Key area of critical county concern; and
k. All boardwalks or bird-watching blinds to be constructed in the land area designated as 620, 500 or 740.4 on the existing conditions map shall be reviewed and approved as a minor conditional use subject to the following standards:

    1. The boardwalk or bird-watching blind shall be located so that the flow of water within the Ohio Key area of critical county concern is not altered; and
    2. The boardwalk or bird-watching blind shall be located so as to not interrupt wading bird use of the lands designated as 612 and 500 on the existing conditions map.

(2) Except as expressly provided for and modified by the Ohio Key area of critical county concern, all development in the area shall be subject to each and every provision of this chapter.

Sec. 106-10. Big Pine Key Area of Critical County Concern.

(a) Established.

The Big Pine Key area of critical county concern is hereby established for the area described on Land Use District Map Numbers 8 and 9 of 21.

(b) Purpose.

The purpose of the Big Pine Key area of critical county concern is to establish a focal point planning effort directed at reconciling the conflict between reasonable investment backed expectations and the habitat needs of the Florida Key Deer that is listed as endangered under the Federal Endangered Species Act.

(c) Focal point planning program.

(1) The county shall initiate a focal point planning program for the Big Pine Key area of critical county concern that considers the following:

a. The reasonable investment backed expectations of the owners of land within the Big Pine Key area of critical concern;
b. The habitat needs of the Florida Key Deer;
c. The conflicts between human habitation and the survival of the Florida Key Deer;
d. The role and importance of freshwater wetlands in the survival of the Florida Key Deer;
e. Management approaches to reconciling the conflict between development and the survival of the Florida Key Deer; and
f. Specific implementation programs for the Big Pine Key area of critical county concern.

(2) The focal point planning program shall be carried out by the Planning Director, in cooperation with the officer in charge of the National Key Deer Refuge. The planning program shall include a public participation element, and shall provide for notice by publication of all public workshops or hearings to the owners of land within the Big Pine Key area of critical county concern.

(3) The focal point planning program for the Big Pine Key area of critical county concern shall be completed within 12 months of the adoption of this chapter, and the Planning Director shall submit a report together with recommended amendments to the Monroe County Comprehensive Plan and this chapter within 30 days after the completion of the focal point planning program for the Big Pine Key area of critical county concern.

(d) Interim regulations.

Notwithstanding any other provisions of this chapter, no development shall be carried out on the Big Pine Key area of critical county concern prior to the completion of the focal point planning program required by subsection (c) of this section and the adoption of amendments to the Monroe County Comprehensive Plan and this chapter except in accordance with the following:

(1) No development shall be carried out in the Big Pine Key area of critical county concern except for single-family detached dwellings on lots in the improved subdivision district or on lots having an area of one acre or more.
(2) No development shall be carried out in the Big Pine Key area of critical county concern on any land designated as freshwater wetland on the existing conditions map. Nothing in this designation shall prohibit the development of a single-family detached dwelling on a lot that includes land that is designated as freshwater wetlands or transitional habitat on the existing conditions map, provided that:

a. There is sufficient land area for the development of a single-family detached dwelling and required accessways that are not designated as freshwater wetlands or transitional habitat; and
b. Adequate provision is made to prevent surface water runoff from a portion of the lot to be developed with a single-family detached dwelling from flowing into the freshwater wetland or transitional habitat.

(3) All development otherwise conforms with each and every provision of this chapter.

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Chapter 110 DEVELOPMENT REVIEW

ARTICLE I. - IN GENERAL

Sec. 110-1. Applicability.

The provisions of this article shall apply to all applications for development approval.

Sec. 110-2. Application and Fees.

Every application for development approval shall be in a form specified by the Planning Director and shall be accompanied by a nonrefundable fee as established from time to time by the BOCC to defray the actual cost of processing the application, and the provision of notice if required. If a person other than the landowner is submitting an application, a notarized letter of agency from the landowner authorizing the person to represent them with respect to the application shall be required. The term “applicant” as used in this chapter refers to the landowner or the landowner’s agent, as applicable.

Sec. 110-3. Pre-Application Conference and Community Participation Meetings.

(a) Pre-Application Conference

(1) An applicant for development approval may request a pre-application conference with Planning and Environmental Resources Department staff by submitting an application and the applicable fee to the department. Prior to the conference, the applicant shall provide to the department: a written description of existing development on the property and the proposed development including its character, location and magnitude. The purpose of this conference is to acquaint the participants with the requirements of the land development code, applicable comprehensive plan policies and the views and concerns of the county.

(2) If the applicant requests so and pays the applicable fee, the substance of the pre-application conference shall be recorded in a letter of understanding (LOU) prepared by department staff and signed by the Planning Director. The LOU shall be mailed to the applicant generally within 30-45 days after the conference, except under those circumstances where additional information is required by department staff following the conference. In those situations, the Planning Director cannot issue a letter until all required information is submitted and reviewed. The letter shall set forth the subjects discussed at the conference and the county's position in regard to the subject matters discussed.

(3) The applicant shall be entitled to rely upon representation made at the conference only to the extent such representations are set forth in the LOU. An LOU shall not provide any vesting to requirements, code and the comprehensive plan. The development shall be required to be consistent with all regulations and policies at the time of development approval. The Planning Director acknowledges that all items

required as a part of the application for development approval may not have been addressed at the conference, and consequently reserves the right for additional comment.

(b) Community Participation Meeting

Applicants requesting a Major Conditional Use Permit pursuant to Article III of this chapter, or a Development Agreement pursuant to Article V of this chapter shall provide for public participation through a community meeting.

(1) Scheduling.
The applicant will coordinate with the Planning Director regarding the date, time and location of the proposed community meeting; however, all meetings are to be held on a weekday evening at a location close to the project site, between 45 and 120 days prior to the first of any public hearings required for development approval.

(2) Notice of Meeting.
The community meeting shall be noticed at least 15 days prior to the meeting date by advertisement in a Monroe County newspaper of general circulation, mailing of notice to surrounding property owners, and posting of the subject property, in accordance with Section 110-5.

(3) Noticing and Advertising Costs.
The applicant shall pay the cost of the public notice and advertising for the community meeting and provide proof of proper notice to the Planning Director.

(4) The community meeting shall be facilitated by a representative from the Monroe County Planning & Environmental Resources Department and the applicant shall be present at the meeting.

Sec. 110-4. Determination of Completeness and Compliance.

Within 15 working days after an application for development approval has been received, the Planning Director or his or her designee shall determine whether the application is complete. If the application is not complete, the Planning Director or his or her designee shall serve a written notice to the applicant specifying the application's deficiencies. The Planning Director or his or her designee shall take no further action on the application unless the deficiencies are remedied. If the Planning Director or his or her designee fails to make a determination of completeness within 15 working days, the application is deemed complete, except in cases where the Land Development Code or Comprehensive Plan specifically requires a deficient document. In cases where the Land Development Code or Comprehensive Plan specifically requires a deficient document, regardless of the 15 working day deadline, the applicant shall provide the required document prior to any final decision on the application. Once the application is deemed complete, the Planning Director or his or her designee shall process and review the application in

accordance with the procedure required for the type of application as provided in the Land Development Code. A determination of completeness shall not constitute a determination of compliance with the requirements of the Comprehensive Plan or this Land Development Code.

Sec. 110-5. Notice.

(a) *Content of notice*. Every required notice shall include the date, time and place of the hearing or meeting, (if applicable)the address of the subject property, where known, the closest mile marker, a summary of the proposal to be considered, and identification of the board, commission, committee, or body conducting the hearing or meeting.

(b) *Advertised notice*. Unless otherwise specified, notice of public hearings or public/community meetings required by this Land Development Code shall be published in a Monroe County newspaper of paid general circulation at least 15 days prior to the public hearing or public meeting in the non-legal section (unless specified otherwise). The newspaper shall be of general interest and readership in the community. The advertisement shall appear in a newspaper that is published at least five days a week. The advertisements shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper. The advertisement shall be captioned, “NOTICE OF PUBLIC HEARING,” or “NOTICE OF PUBLIC MEETING,” respectively, in a type no smaller than 18 point. If directed by resolution of the BOCC, advertisements may be put in additional newspapers published less frequently than five days a week in the legal advertising or non-legal section prior to the hearing without the same specification as to size or timeframe, or as a “NOTICE OF PUBLIC MEETING” with the agenda available from the Planning and Environmental Resources Department.

(1) Advertisements for public hearings or community meetings regarding amendments to the land use (zoning) district map, overlays to the land use (zoning) district map or future land use map shall be captioned, “NOTICE OF CHANGE TO LAND USE (ZONING) DISTRICT MAP” or “NOTICE OF CHANGE TO FUTURE LAND USE MAP,” respectively, in 18 point type, shall contain a geographic location map which clearly indicates the area covered by the proposal, shall include major street names as a means of identification of the area and shall state in a brief form the nature of the amendment to be considered by ordinance title.
(2) Advertisements for public hearings or public meetings regarding amendments to the text of this Land Development Code shall be captioned "NOTICE OF CHANGE TO LAND DEVELOPMENT REGULATIONS" in 18 point type and shall be advertised by ordinance title.
(3) Advertisements noticing grant of minor conditional use permits shall be advertised as specified above, but shall be placed in the legal section of the newspaper, and captioned, “NOTICE OF DEVELOPMENT ORDER APPROVAL FOR A MINOR CONDITIONAL USE PERMIT.” The advertisement shall indicate commencement of the 30 day appeal period and the means of filing an appeal.

(4) Advertisements noticing grant of major conditional use permits shall be advertised as specified above, but shall be placed in the legal section of the newspaper, and captioned, “NOTICE OF DEVELOPMENT ORDER APPROVAL FOR A MAJOR CONDITIONAL USE PERMIT,” with the cost to be borne by the applicant. The advertisement shall indicate commencement of the 30 day appeal period and the means of filing an appeal.

(5) Advertisements for all other public hearings or public meetings shall be captioned, "NOTICE OF PUBLIC HEARING" or “NOTICE OF PUBLIC MEETING,” respectively, in 18 point type. In addition to the usual information concerning location, date and time, the body of the advertisement shall describe the matter(s) on which the public may be heard.

(6) Additionally advertisements and notices for Development Agreements, pursuant to Section 163.3225, F.S., shall include the development uses proposed on the property, the proposed population densities, the proposed building intensities and height and shall specify a place where a copy of the proposed agreement can be obtained. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

(7) The advertisements listed above may be combined by title and content if the hearings are scheduled for the same meeting.

(8) The applicant shall coordinate with the County to assure the meeting is posted to the County’s website and social media platforms. Failure to post notice on the Monroe County official website shall not constitute grounds for the cancellation of any public meeting.

(c) *Posting of notice*. At least 15 days prior to any public hearing or public meeting on an application which requires posting of notice, all applicants, excluding governmental agencies, shall post the property that is the subject of the hearing or meeting with a waterproof signs(s) prepared and provided by the Planning and Environmental Resources Department. The notices shall be located so that the notices shall be easily visible from all public streets and roads abutting the property. Failure to provide proper notice as per this Land Development Code or other reason resulting in a delayed hearing shall result in the re-noticing of a new hearing or meeting date and rehearing of the original proposal and which shall be at the expense of the applicant and which shall be an amount equal to double the appropriate application fee. The applicant shall remove the posted notice within ten days after completion of the hearing or meeting.

(d) *Mailing of notice* For the types of applications listed below, or otherwise required by this Land Development Code, notice of a public hearing or public meeting shall be mailed by the county to all owners of real property located within 600 feet of the property that is the subject of the proposed development approval, including any residents of the parcel proposed for development, at least 15 days prior to the public hearing or public meeting. A list of such owners, as shown by the latest available records in the Monroe County Property

Appraiser Office, shall be provided by the applicant with an application for development approval.

(1) *Mailing of notice: Major conditional use permit*. Notices shall be mailed to property owners, as described above, at least 15 days prior to a public hearing by the Planning Commission.

(2) *Mailing of notice: Minor conditional use permit*. Notices shall be mailed to property owners, as described above, at least 15 days prior to the public meeting of the DRC. Following the DRC meeting, if the Planning Director approves the minor conditional use permit and signs a development order, notice of the issuance of the minor conditional use permit shall be mailed by the county to property owners, as described above, and shall indicate commencement of the 30 day appeal period and the means of filing an appeal.

(3) *Mailing of notice: Community Meeting*. Notices shall be mailed to property owners, as described above, at least 15 days prior to a Community Meeting required pursuant to Section 110-3 or 102-159.

(e) *Other notice*. Notice of all public hearings and public meetings shall be posted on the county's official website as soon as is practical. Failure to post notice on the county's official website shall not constitute grounds for the cancellation of any public hearing or public meeting, nor shall it constitute grounds for the cancellation of any action taken by a board at such a meeting.

(f) *Affidavit and photograph of notice*. An affidavit and photographic evidence shall be provided by the applicant at the beginning of the respective public hearing or public meeting, or in the cases of minor conditional use permit applications at beginning of the development review committee meeting, demonstrating that the applicant has complied with the notice required by this section.

(g) *Noticing expenses.* Applicants shall be responsible for the cost of all noticing.

Sec. 110-6. Hearing Procedures for Applications for Development Approval.

(a) *Setting the public hearing.* When the Planning Director or his or her designee determines that an application for development approval is complete and that a public hearing is required by this Land Development Code, he or she shall consult with the coordinator/secretary of the bodies required to conduct the public hearing and shall select a place and time certain for the required hearing, and shall cause published, written and posted notices of the public hearing to be given.

(b) *Examination and copying of application and other documents.* At any time upon reasonable request, any person may examine the application and materials submitted in support of or

in opposition to an application for development approval. Copies of such materials shall be made available at cost.

(c) *Conduct of hearing.*

(1) *Oath or affirmation.* Testimony and evidence shall be given under oath or by affirmation to the body conducting the public hearing.

(2) *Rights of all persons.* Any person may appear at a public hearing and submit evidence, either individually or as a representative of an organization. Anyone representing an organization must present written evidence of his authority to speak on behalf of the organization in regard to the matter under consideration. Each person who appears at a public hearing shall provide his or her name and address and if appearing on behalf of an organization state the name and mailing address of the organization.

(3) *Due order of proceedings.* The body conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious. Any person may ask relevant questions of other persons appearing as witnesses, but shall do so only through the chair at the chair's discretion. The order of proceedings shall be as follows:

a. Planning and Environmental Resources Department staff shall present a narrative and graphic description of the proposed development.

b. Planning and Environmental Resources Department staff shall present a recommendation, as well as any recommendations by members of the development review committee. The staff recommendation shall address each factor required to be considered by the Comprehensive Plan and this Land Development Code.

c. The applicant shall present any information it deems appropriate.

d. Public testimony shall be heard

e. Planning and Environmental Resources Department staff may respond to any statement made by the applicant or any public comment.

f. The applicant may respond to any testimony or evidence presented by the staff or public.

(4) *Testimony*. In the event any testimony or evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to make a proffer in regard to such testimony or evidence for the

record. Such proffer may be made at the public hearing or in writing within 15 days after the close of the public hearing.

(5) C*ontinuance of public hearing*. The body conducting the public hearing may, on its own motion, continue the public hearing to a fixed date, time and place. No notice shall be required if a public hearing is continued to a fixed date, time and place. An applicant shall have the right to request and be granted a continuance; however, all subsequent continuances shall be granted at the discretion of the body conducting the hearing only upon good cause shown. All adjourned public hearings shall commence only upon the giving of all notices that would have been required were it the initial call of the public hearing.

(6) *Written protests*. In the event of written protests against a proposed major conditional use permit signed by the real property owners of 20 percent or more of the people required to be noticed in Section 110-5(d), such application shall not be approved except by the concurring vote of at least four commissioners before the full board of either commission.

(7) *Other rules to govern*. Other matters pertaining to the public hearing shall be governed by other provisions of this Monroe County Code applicable to the body conducting the hearing and its adopted rules of procedure, so long as the same are not in conflict with this article. The county's decision-making bodies may adopt a rule of procedure to limit the number of applications for development approval that may be considered per meeting.

(8) *Record.*

a. The body conducting the public hearing shall record the proceedings by any appropriate means that shall be transcribed at the request of any person upon application to the County Administrator and payment of a fee to cover the cost of transcription or duplication of the audio record or tape. Except, however, if a person desires to appeal a decision of the Planning Commission pursuant to chapter 102, article VI, such person shall, at his own expense, provide a transcript of the public hearing before the Planning Commission transcribed by a certified court reporter.

b. The transcript, all applications, memoranda, or data submitted to the decision-making body, evidence received or considered by the decision-making body, questions and proffers of proof, objections, and rulings thereon, presented to the decision-making body, and the decision, recommendation or order of the decision-making body shall constitute the record.

c. All records of decision-making bodies shall be public records, open for inspection at reasonable times and upon reasonable notice.

Sec. 110-7. Actions by Decision-Making Persons and Bodies.

(a) *Generally*. All decision-making persons and bodies shall act in accord with time limits established in this Land Development Code. Action shall be taken as promptly as possible in consideration of the interests of the citizens of the county.

(b) *Findings*. All decisions shall be in writing and adopted by resolution and shall include at least the following elements:

(1) A summary of the information presented before the decision-making body;

(2) A summary of all documentary evidence provided to the decision-making body or which the decision-making body considered in making its decision; and

(3) A clear statement of specific findings of fact and a statement of the basis upon which such facts were determined, with specific reference to the relevant standards set forth in this Land Development Code.

(c) *Notification*. Notification of a decision-making body's decision, by copy of the resolution, shall be mailed by the Planning Director to the applicant by certified mail.

Sec. 110-8. Successive Applications.

Whenever any application for development approval is denied for failure to meet the substantive requirements of the Comprehensive Plan and/or the Land Development Code, an application for development approval for all or a part of the same property shall not be considered for a period of two (2) years after the date of denial unless the subsequent application involves a development proposal that is materially different from the prior proposal or unless four (4) members of the Planning Commission determine that the prior denial was based on the material mistake of fact. For the purposes of this provision, a development proposal shall be considered materially different if it involves a significant modification(s) as determined by Planning Director or the application expressly satisfies the deficiencies that were identified in the prior denial. The body charged with conducting the initial public hearing under such successive applications shall resolve any question concerning the similarity of a second application or other questions that may develop under this section.

Sec. 110-9. Suspension of Development Review Proceedings.

The Planning Director may in his or her discretion suspend consideration of any application for development approval during the pendency of a code compliance proceeding involving all or a portion of the parcel proposed for development. The Planning Director may suspend development review entirely for such a parcel, or may choose to proceed with review of a development application but impose conditions on such development approval requiring

resolution of outstanding code violations on the subject parcel prior to or concurrent with the proposed development.

Secs. 110-10—110-36. Reserved.

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ARTICLE II. DEVELOPMENT AS OF RIGHT

Sec. 110-37. Development Permitted as of Right.

(a) Purpose.
Uses permitted as of right are those uses that are compatible with other land uses in a land use (zoning) district, provided they are developed in conformity with the Comprehensive Plan and this Land Development Code.

(b) Application.
An applicant for development approval for a use permitted as of right shall submit an application for a building permit, which shall be reviewed by Planning and Environmental Resources Department staff.

(c) Action on the application.
If the Planning Director determines that the proposed development is in compliance with the Comprehensive Plan and this Land Development Code, and the Building Official determines that it is in compliance with the Florida Building Code, the Building Official shall issue a building permit with or without conditions.

Secs. 110-38 – 110-62. Reserved.

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ARTICLE III. CONDITIONAL USES

Sec. 110-63. Purpose.

Minor and major conditional uses are those uses that are generally compatible with the other land uses permitted in a land use (zoning) district, but which require individual review of their location, design and configuration and the imposition of conditions in order to ensure the appropriateness of the use at a particular location.

Sec. 110-64. Authority.

The Planning Director and the Planning Commission may, in accordance with the procedures, standards and limitations of this article and subject to such rights of appeal as are provided, approve applications for conditional use permits.

Sec. 110-65. Authorized Conditional Uses.

Only those uses that are authorized in chapter 130, article III, may be approved as conditional uses, unless otherwise specified in this Land Development Code.

(a) The designation of a use in a land use (zoning) district as a conditional use does not constitute an authorization or an assurance that such use will be approved.

(b) Each proposed conditional use shall be evaluated by the Planning Director and, in the case of major conditional uses, the Planning Commission for compliance with the standards and conditions set forth in this article for each district.

(c) The Planning Director and the Planning Commission are empowered, within their review of minor and major conditional use applications, respectively, to approve, or approve with conditions, or deny any application that may not be appropriate within any particular area in the context of surrounding properties and neighborhoods as well as on grounds of insufficient submittals for adequate review or contrary to objectives, policies, and goals of the Comprehensive Plan or the provisions of this Land Development Code.

Sec. 110-66. Initiation.

An application for a conditional use permit shall be submitted by the landowner, or an agent authorized in writing to act on the landowner's behalf.

Sec. 110-67. Standards Applicable to all Conditional Uses.

When considering applications for a conditional use permit, the Planning Director and the Planning Commission shall consider the extent to which:

(a) The conditional use is consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this Land Development Code;

(b) The conditional use is consistent with the community character of the immediate vicinity of the parcel proposed for development;

(c) The design of the proposed development minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties;

(d) The proposed use will have an adverse effect on the value of surrounding properties;

(e) The adequacy of public facilities and services;

(f) The applicant for conditional use approval has the financial and technical capacity to complete the development as proposed and has made adequate legal provision to guarantee the provision and development of any improvements associated with the proposed development;

(g) The development will adversely affect a known archaeological, historical or cultural resource;

(h) Public access to public beaches and other waterfront areas is preserved as a part of the proposed development; and

(i) The proposed use complies with all additional standards imposed on it by the particular provision of this Land Development Code authorizing such use and by all other applicable requirements.

Sec. 110-68. Conditions.

The Planning Director or the Planning Commission may attach such conditions to a conditional use permit as are necessary to carry out the purposes of the Comprehensive Plan and this Land Development Code and to prevent or minimize adverse effects upon other property in the neighborhood, including, but not limited to, limitations on size, bulk and location; requirements for landscaping, lighting, ingress and egress; phasing of development; hours of operation; and mitigation of environmental impacts.

Sec. 110-69. Minor Conditional Uses.

(a) *Applications for a minor conditional use permit.* An application for a minor conditional use permit shall be submitted to the Planning Director in the form provided by the Planning and Environmental Resources Department. If an application for a minor conditional use permit includes a major conditional use, then the minor conditional use shall be considered in

conjunction with the major conditional use in accordance with the procedures of Section 110-70.

The application shall include:

(1) the name and address of the property owner(s) of record;

(2) the property record card(s) from the Monroe County Property Appraiser;

(3) a written legal description of the property proposed for development;

(4) a boundary survey of the property proposed for development, prepared by a surveyor registered in the State of Florida, showing the boundaries of the site, elevations, bodies of water and wetlands on the site and adjacent to the site, existing structures including all impervious areas, existing easements, total acreage and total acreage by habitat;

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

a. Date, north point and graphic scale;

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

c. All attributes from the boundary survey;

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

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

f. Tier designation(s) of the site;

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

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

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

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

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

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

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

n. Location of fire hydrants or fire wells;

o. The location of public utilities, including location of the closest available water supply system or collection lines and the closest available wastewater collection system or collection lines (with wastewater system provider) or on-site system proposed to meet required county and state wastewater treatment standards; and

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

(6) any additional information required by a specific regulation applying to the proposed development.

(b) *Review by the Development Review Committee*. An application for a minor conditional use permit shall be reviewed by the Development Review Committee (DRC). At the meeting, DRC members may comment on the application and responsible Planning and Environmental Resources Department staff shall provide their staff report(s). The applicant shall provide any additional information requested by the DRC within 6 months of the date of the DRC meeting when the application was considered. If such information is not received within this timeframe, the application will be deemed withdrawn. DRC members may submit additional reports and comments to the Planning Director within five (5) working days in advance of the meeting. Mailed notice of the DRC meeting shall be sent to surrounding property owners in accordance with Section 110-5.

(c) *Decision by the Planning Director*. Within 60 days after the DRC meeting, the Planning Director shall render a development order granting, granting with conditions or denying the application for a minor conditional use permit, with the exception of any application where a condition has been imposed that must be satisfied prior to the issuance of a development

order approving the minor conditional use permit, in which case the development order shall be issued within 30 days after receipt of proof of satisfaction of the condition(s). Such proof of satisfaction must be submitted to the Planning Director within 6 months of notification to the applicant by the County. If such proof is not received within this timeframe, the application will be deemed withdrawn.

(d) *Notice of grant of a minor conditional use permit.* The Planning Director shall give both advertised and mailed notice of any development order granting a minor conditional use in accordance with Section 110-5.

(e) *Consideration of a minor conditional use approval by the Planning Commission*. For applications for minor conditional use approval where the Planning Director determines the application has unique or peculiar circumstances and the applicant and the Planning Director by mutual consent agree, the Planning Director may request a public hearing by the Planning Commission. Such agreement shall be documented in writing in a form approved by the County Attorney.

(f) *Appeal of a minor conditional use approved by the Planning Director*. The applicant, an adjacent property owner, or any aggrieved or adversely affected person, as defined by F.S. § 163.3215(2), may request an appeal of the Planning Director's minor conditional use decision under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days of the written decision of the Planning Director.

(g) *Appeal of a minor conditional use approved by the Planning Commission*. The applicant, an adjacent property owner, or any aggrieved or adversely affected person, as defined by F.S. § 163.3215(2), or any person who presented testimony or evidence at the public hearing conducted pursuant to subsection (c) of this section may request an appeal of the Planning Commission's decision under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days of the written decision of the Planning Commission.

Sec. 110-70. Major Conditional Uses.

(a) *Applications for major conditional uses.* An application for a major conditional use permit shall be submitted to the Planning Director in a form provided by the Planning and Environmental Resources Department. The application shall include:

(1) the name and address of the property owner(s) of record;

(2) the property record card(s) from the Monroe County Property Appraiser;

(3) a written legal description of the property proposed for development;

(4) a boundary survey of the property proposed for development, prepared by a surveyor registered in the State of Florida, showing the boundaries of the site, elevations, bodies of water and wetlands on the site and adjacent to the site, existing structures including all impervious areas, existing easements, total acreage and total acreage by habitat;

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

a. Date, north point and graphic scale;

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

c. All attributes from the boundary survey;

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

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

f. Tier designation(s) of the site;

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

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

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

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

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

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

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

n. Location of fire hydrants or fire wells;

o. The location of public utilities, including location of the closest available water supply system or collection lines and the closest available wastewater collection system or collection lines (with wastewater system provider) or on-site system proposed to meet required county and state wastewater treatment standards; and

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

(6) An environmental designation survey consisting of:

a. A plan drawn to a scale of one inch equals 20 feet or less, except where impractical and the Planning Director authorizes a smaller scale, and showing the following:

1. The location of property;
2. The date, approximate north point and graphic scale;
3. The acreage within the property;
4. The boundary lines of the property and their bearings and distances;
5. The topography and typical ground cover;
6. The general water surface characteristics, water areas and drainage patterns, including location of MHWL, if applicable;
7. The contours at an interval of not greater than one foot or at lesser intervals if deemed necessary for review purposes;
8. The 100-year flood-prone areas by flood zone;
9. The presently developed and/or already altered areas; and

b. A natural vegetation map and/or a map of unique environmental features such as:

1. Tropical hardwood hammocks;
2. Endangered species habitats; and
3. Major wildlife intensive use areas;

c. Aerial photographs of the property and surrounding area;

d. A review of historical and archeological sites by the Florida Division of Archives, History and Records Management;

e. A review of unique environmental features such as:

1. Tropical hardwood hammocks;
2. Endangered species habitats; and
3. Major wildlife intensive use areas;

f. Actual acreage of specific vegetation species or other environmental characteristics;

g. General information relating to the property in regard to the potential impact which development of the site could have on the area's natural environment and ecology;

h. Environmental resources:

1. If shoreline zones were identified, describe in detail any proposed site alterations in the areas, including vegetation removal, dredging, canals or channels; identify measures which have been taken to protect the natural, biological functions of vegetation within this area such as shoreline stabilization, wildlife and marine habitat, marine productivity and water quality maintenance;
2. If tropical hammock communities or other protected vegetative communities were identified, describe proposed site alteration in those areas and indicate measures which were taken to protect intact areas prior to, during and after construction;
3. Describe plans for vegetation and landscaping of cleared sites including a completion schedule for such work;

i. Environmental resources-wildlife. Describe the wildlife species that nest, feed or reside on or adjacent to the proposed site. Specifically identify those species considered to be threatened or endangered. Indicate measures that will be taken to protect wildlife and their habitats; and

j. Environmental resources-water quality:

1. Identify any wastewater disposal areas, including stormwater runoff, septic tank drain-fields, impervious surfaces and construction-related runoff; describe anticipated volume and characteristics. Indicate measures taken to minimize the adverse impacts of these potential pollution sources upon the quality of the receiving waters prior to, during, and after

construction; identify the near shore water quality; and identify how this development will not adversely impact the near shore water quality;

2. Indicate the degree to which any natural drainage patterns have been incorporated into the drainage system of the project;

(7) A community impact statement, including:

a. General description of proposed development:

1. Provide a general written description of the proposed development; including any proposed phases of development, the site size, the number and type of existing and proposed dwelling units, the amount and type of existing and proposed nonresidential floor area, and parking demand and capacities;
2. Identify aspects of the project design, such as a clustering, which were incorporated to reduce public facilities costs and limit adverse impacts on the environment, and describe building and siting specifications which were used to reduce hurricane and fire damage potential;

b. Impact assessment on public facilities—water supply:

1. Identify projected daily potable water demands and specify any consumption rates that have been assumed for the projection;
2. 2.Provide proof of coordination with the Florida Keys Aqueduct Authority; assess the present and projected capacity of the water supply system and the ability of such system to provide adequate water for the proposed development; and
3. Describe measures to ensure that water pressure and flow will be adequate for fire protection for the type of construction proposed;
4. Identify aspects of the project design which are proposed to reduce potable water demand and impacts to the public water supply;

c. Impact assessment on public facilities—wastewater management:

1. Provide proof of coordination with the Florida Department of Health;

2. Provide projection of the average flows of wastewater generated by the development at the end of each development phase; describe proposed treatment system, method and degree of treatment, quality of effluent, and location of effluent and sludge disposal areas; identify method and responsibilities for operation and maintenance of facilities;

3. If public facilities are to be used, provide proof of coordination with the county waste collection and disposal district; assess the present and

projected capacity of the treatment and transmission facilities and the ability of such facilities to provide adequate service to the proposed development; and

4. If applicable, provide a description of the volume and characteristics of any industrial or other effluents;

d. Impact assessment on public facilities—solid waste:

1. Identify projected average daily volumes of solid waste generated by the development at the end of each phase; indicate proposed methods of treatment and disposal; and

2. Provide proof of coordination with county municipal services district; assess the present and projected capacity of the solid waste treatment and disposal system and the ability of such facilities to provide adequate services to the proposed development;

e. Impact assessment on public facilities—transportation:

1. Provide a projection of the expected vehicle trip generation; describe in terms of external trip generation and average daily and peak hour traffic;

2. Provide a traffic study, if applicable, as specified in Section 114-200; and

(8) Any additional information required by a specific regulation applying to the proposed development.

(b) *Review by the Development Review Committee (DRC).* An application for a major conditional use permit shall be reviewed by the DRC. The DRC shall give comments to the applicant, responsible staff and the Planning Director. Within 60 days of the meeting or within 60 days after any additional information required from the applicant is furnished or within 60 days after a required community meeting, the department shall provide for advertisement of the required public hearing by the Planning Commission.

(c) *Public hearing on an application for a major conditional use permit.* The applicant shall provide for a Community Meeting between 45 and 120 days prior to the Planning Commission hearing, in accordance with Section 110-3(b). The Planning Commission shall hold a public hearing on the application for a major conditional use permit and shall issue a development order granting, granting with conditions or denying the application for a major conditional use permit within 60 days of the public hearing by the Planning Commission, with the exception of any application where a condition has been imposed that must be satisfied prior to the issuance of a development order approving the major conditional use permit, in which case the development order shall be issued within 30 days

after receipt of proof of satisfaction of the condition. The applicant shall provide any additional information to satisfy a condition required by the Planning Commission within one (1) year of the date of the Planning Commission meeting when the application was considered. If such information is not received within this timeframe, the application will be deemed withdrawn.

(d) *Appeal of a major conditional use decision by the Planning Commission*. The applicant, an adjacent property owner, or any aggrieved or adversely affected person, as defined by F.S. § 163.3215(2), or any person who presented testimony or evidence at the public hearing conducted pursuant to subsection (c) of this section may request an appeal of the Planning Commission's decision under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days of the written decision of the Planning Commission.

Sec. 110-71. Reserved.

Sec. 110-72. Recording of Conditional Uses.

(a) All conditional use approvals shall be recorded with the Clerk of the Circuit Court in the official records of the county, including the terms and conditions upon which such approval is given, prior to the issuance of a building permit. The requirement contained in Section 110-73(a) that a conditional use permit not be transferred to a successive owner without notification to the Planning Director within 60 days of the transfer must be included on the document which is recorded pursuant to this section.

(b) Prior to the expiration of the time periods described in Section 110-73(a)(1) and the commencement of any construction, the owner of any property which is the subject of a recorded conditional use approval and who desires to abandon such approval shall submit a petition to the Planning Director. The resolution shall be a recordable instrument. If the conditional use, which is the subject of the recorded approval, has been constructed, or partially constructed, the owner of the site may petition the Planning Commission o Planning Director for the release; but the body shall not grant such a petition unless it finds that the conditional use has been abandoned or is presently in an irrevocable process of abandonment.

Sec. 110-73. Development Under an Approved Conditional Use Permit.

(a) *Effect of issuance of a conditional use approval.* Approval for a conditional use shall be deemed to authorize only the particular use for which it is issued. A conditional use approval shall not be transferred to a successive owner without notification to the Planning Director within 60 days of the transfer.

(1) Unless otherwise specified in a major conditional use approval, all required building permits and certificates of occupancy and/or certificates of completion shall be procured within three (3) years of the date on which the major conditional use

approval is recorded and filed in the official records of Monroe County, or the major conditional use approval shall become null and void with no further action required by the county. Approval time frames do not change with successive owners. Extensions of time to a major conditional use approval may be granted only by the Planning Commission for periods not to exceed two (2) years, unless otherwise specified. Applications for extensions shall be made prior to the expiration dates. Extensions to expired major conditional use approvals shall be accomplished only by re-application for the major conditional uses. When a hearing officer has ordered a conditional use approval initially denied by the Planning Commission, the Planning Commission shall nonetheless have the authority to grant or deny a time extension under this section. If the Planning Commission denies a time extension, the holder of the conditional use may request an appeal of that decision under chapter 102, article VI by filing the notice required by that article within 30 days of the written denial of the Planning Commission.

(2) Unless otherwise specified in a minor conditional use approval, all required building permits and certificates of occupancy and/or certificates of completion shall be procured within three years of the date on which the minor conditional use approval is recorded and filed in the official records of Monroe County, or the minor conditional use approval shall become null and void with no further action required by the county. Approval time frames do not change with successive owners. Extensions of time to a minor conditional use approval may be granted only by the Planning Director for periods not to exceed one year. Applications for extensions shall be made prior to the expiration dates. Extensions to expired minor conditional use approvals shall be accomplished only by re-application for the minor conditional uses. When a hearing officer has ordered a conditional use approval initially denied by the Planning Director, the Planning Director shall nonetheless have the authority to grant or deny a time extension under this section. If the Planning Director denies a time extension, the holder of the conditional use may request an appeal of that decision under Chapter 102, Article VI by filing the notice required by that article within 30 days of the written denial of the Planning Director.

(3) Development of the use shall not be carried out until the applicant has secured all other permits and approvals required by this Land Development Code, Florida Building Code, and/or regional, state and federal agencies and until the approved conditional use is recorded in accordance with Section 110-72.

(4) In the case of conditional use permit approvals for sites that have existing development, lawful uses that are in existence but anticipated to be demolished may remain in place while the redevelopment is taking place to provide an opportunity for the site to remain functional. The timeframe for removal of existing structures and uses shall be included in the conditional use approval.

(b) *Enforcement.* Whenever the Planning Director has reason to believe the provisions and/or conditions of a conditional use permit are being violated, the Planning Director and Code Compliance Director shall notify the alleged violator by certified mail and require corrective action of the violation(s) within a reasonable period of time, not to exceed 120 days. If necessary, for the protection of the public health, safety or welfare, the Planning Director may notify the Building Official to issue a temporary order stopping any and all work on the development until such time as the violation is cured. If the violation(s) is not corrected within the time specified, the violation(s) shall be referred to the Code Compliance Department for Enforcement.

(c) *Deviations to a conditional use permit approval.* Deviations may be made to developments approved by conditional use permits and existing uses deemed to have conditional use permits in accordance with Section 101-4(c) as follows:

(1) Deviations that do not result in additional impact. After development approved by a conditional use permit is complete pursuant to Section 110-73(d), improvements that do not result in additional impact may be approved as of right through the building permit application process. Such modifications are limited to the following:

a. Normal maintenance or repair to permit continuation of an approved use(s) and/or structure(s);

b. Construction and/or installation of an accessory structure that does not reduce the approved amount of open space for the site, does not alter any aspect of an approved structure(s) and/or required landscaping, and meets all requirements of this Land Development Code;

c. Replacement of an approved structure with a new structure that is for the same use, within the same building footprint of the building to be replaced, and of equal or lesser height of the building to be replaced. However in no event shall the preceding language permit the continued existence or replacement of a nonconforming use or nonconforming structure prohibited by Chapter 102, Article III. Nonconformities;

d. Installation of additional landscaping or the replacement of approved landscaping; or

e. Demolition of a structure that is not required by the development order.

f. For approved commercial retail uses only, a change of intensity from high to medium or low or a change of intensity from medium to low.

The preceding improvements may not be permitted as of right if their approval would result in a substantial change in the overall impact or intent of the

development order or violate a provision or condition of the development order, as determined by the Planning Director.

(2) Minor deviations to minor and major conditional use permits. Minor deviations to minor or major conditional use permits may be approved by the Planning Director. Such modifications are limited to the following:

a. Additional development that requires a deviation of up to ten percent (10%) of one or more the following requirements as follows:

1. Decrease in the amount of off-street parking;

2. Decrease in the amount of loading/unloading spaces;

3. Decrease in the amount of landscaping;

4. Modification of the bufferyard width and/or plantings;

5. Modification to the access configuration;

6. Increase in the amount of nonresidential floor area; and/or

7. Decrease in the amount of open space.

b. Additional development that requires a deviation of up to five percent (5%) of one or more the following requirements as follows:

1. Increase in the amount of dwelling units; and/or

2. Increase in the amount of transient dwelling units, including hotel-motel, recreational vehicle and/or institutional dwelling units.

c. For approved commercial retail or restaurant uses only, additional development or redevelopment that requires an increase of up to 10 percent of the approved intensity in terms of trip generation.

d. Adjustments to the development plan schedule or phasing plan. However, in no event may a minor deviation extend any final deadlines for completion as such an approval may only be granted in accordance with subsection (a).

Development approved by a minor deviation shall be consistent with all policies and requirements of the Comprehensive Plan and this Land Development Code.

Concerning major conditional use permits, regardless of compliance with the preceding requirements, improvements or additional development may not be permitted as a minor deviation if such would result in a substantial change in the overall impact or intent of the development order or violate a provision or condition of the development order. Such improvements or additional development may only be approved by the Planning Commission through a major deviation or an amendment to the major conditional use permit.

Concerning minor conditional use permits, regardless of compliance with the preceding requirements, improvements or additional development may not be permitted as a minor deviation if such would result in a substantial change in the overall impact or intent of the development order. Such improvements or additional development may only be approved by an amendment to the minor conditional use permit.

If the development requiring the minor deviation meets the requirements, the Planning Director may attach new conditions or adjust the original conditions as necessary to carry out the purposes of the Comprehensive Plan and Land Development Code and to prevent or minimize adverse effects on other properties in the neighborhood.

Requests for minor deviations shall be submitted to the Planning and Environmental Resources Department on a form prescribed by the Planning Director. Minor deviation approvals and denials shall be provided to the applicant in writing and are subject to administrative appeal to the Planning Commission.

(3) *Major deviations to minor conditional use permits.* Major deviations to minor conditional use permits may be approved by the Planning Director. Such modifications are limited to the following:

a. Additional development that requires a deviation of 11 to 20 percent of one or more the following requirements as follows:

1. Decrease in the amount of off-street parking;

2. Decrease in the amount of loading/unloading spaces;

3. Decrease in the amount of landscaping;

4. Modification to the bufferyard width and/or plantings;

5. Modification to the access configuration;

6. Increase in the amount of nonresidential floor area; and/or

7. Decrease in the amount of open space.

b. Additional development that requires a deviation of six (6) to 10 percent of one or more the following requirements as follows:

1. Increase in the amount of dwelling units; and/or

2. Increase in the amount of transient dwelling units, including hotel-motel, recreational vehicle and/or institutional dwelling units.

c. For approved commercial retail or restaurant uses only, additional development or redevelopment that requires an increase of 11 to 20 percent of the approved intensity in terms of trip generation.

Development approved by a major deviation shall be consistent with all policies and requirements of the Comprehensive Plan and this Land Development Code.

Regardless of compliance with the preceding requirements, improvements or additional development to a minor conditional use permit may not be permitted as a major deviation if such would result in a substantial change in the overall impact or intent of the development order. Such improvements or additional development may only be approved by an amendment to the minor conditional use permit.

If the development requiring the major deviation meets the requirements, the Planning Director may attach new conditions or adjust the original conditions as necessary to carry out the purposes of the comprehensive plan and Land Development Code and to prevent or minimize adverse effects on other properties in the neighborhood.

Requests for major deviations shall be submitted to the Planning and Environmental Resources Department on a form prescribed by the Planning Director. Major deviations to minor conditional use permit approvals and denials shall be provided to the applicant in writing and are subject to administrative appeal to the Planning Commission.

(4) Major deviations to major conditional use permits. Major deviations to major conditional use permits shall be approved by the Planning Commission. Such modifications are limited to the following:

a. Additional development that requires a deviation of 11 to 20 percent of one or more the following requirements as follows:

1. Decrease in the amount of off-street parking;

2. Decrease in the amount of loading/unloading spaces;

3. Decrease in the amount of landscaping;

4. Decrease in the bufferyard width and/or plantings;

5. Access pursuant to Section 114-195 through 114-199 or the approved conditional use permit, whichever is more restrictive;

6. Increase in the amount of nonresidential floor area approved by the major conditional use permit; and/or

7. Decrease in the amount of open space required pursuant to sections 130-157, 130-162 and 130-164 or the approved major conditional use permit, whichever is more restrictive.

b. Additional development that requires a deviation of six (6) to 10 percent of one or more the following requirements as follows:

1. Increase in the amount of dwelling units; and/or

2. Increase in the amount of transient dwelling units, including hotel-motel, recreational vehicle and/or institutional dwelling units.

c. For approved commercial retail or restaurant uses only, additional development or redevelopment that requires an increase of 11 to 20 percent of the approved intensity in terms of trip generation.

Development approved by a major deviation shall be consistent with all policies and requirements of the Comprehensive Plan and this Land Development Code.

Regardless of compliance with the preceding requirements, improvements or additional development to a major conditional use permit may not be permitted as a major deviation if such would result in a substantial change in the overall impact or intent of the development order. Such improvements or additional development may only be approved by an amendment to the major conditional use permit.

If the development requiring the major deviation meets the requirements, the Planning commission may attach new conditions or adjust the original conditions as necessary to carry out the purposes of the Comprehensive Plan

and Land Development Code and to prevent or minimize adverse effects on other properties in the neighborhood.

Requests for major deviations shall be submitted to the Planning and Environmental Resources Department on a form prescribed by the Planning Director. Applications for major deviations to major conditional use permits shall be reviewed by the Development Review Committee prior to the Planning Commission public hearing.

Major deviation to major conditional use permit approvals and denials shall be provided to the applicant in writing and are subject to appeal to a hearing officer under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days of the date of the written decision of the Planning Commission.

(5) Amendment to minor and major conditional use permits. Any adjustment, improvement or additional development that is not permitted as of right, as minor deviation, or as major deviation as set forth in subsections (c)(1), (c)(2), (c)(3) or (c)(4) shall be processed as an amendment to a conditional use permit subject to the process and standards in accordance with Section 110-67 and Section 110-70.

(6) Rounding. When units or measurements determining the required standards in this section result in a fractional unit, any fraction less than one-half shall be disregarded and fractions of one-half or greater shall round to the next integer.

(7) Variances and waivers. Under no circumstances shall approval of a minor or major deviation to a conditional use permit negate any requirement to obtain a variance or waiver if the adjustments require such pursuant to this Land Development Code. If a variance or waiver is necessary to show compliance with any of the requirements set forth in subsections (c)(1), (c)(2), (c)(3) or (c)(4), the variance or waiver shall be granted prior to the related minor or major deviation approval.

(8) Timeframe. Deviations in accordance with this section may be approved during construction or after issuance of a certificate of occupancy.

(d) Inspections after development.

(1) Inspections by the Planning and Environmental Resources Department. Following completion of the development of a conditional use permit, the Planning and Environmental Resources Department shall review the development for compliance with the use as approved. If it is determined that the conditional use permit has been developed in accordance with the approval, then a certificate of occupancy shall be issued in accordance with Section 6-145. If the Planning Director finds that the development, as completed, fails in any respect to comply with the use as approved,

he or she shall immediately notify the Building Official, the Planning Commission, the BOCC, and the applicant of such fact. The Building Official shall not issue a certificate of occupancy pursuant to Section 6-145 until the Planning Commission has acted on the Planning Director's notification of noncompliance.

(2) Action by the Planning Commission. Within 30 working days following notification by the Planning Director, the Planning Commission shall:

a. Recommend that the finding of the Planning Director be overruled;

b. Recommend to the applicant modifications in the development to bring it into accord with the terms and provisions of the final site plan approval and the conditional use permit; or

c. Revoke the conditional use permit, as well as all prior approvals and related or resulting permits.

(3) Appeal before hearing officer. The holder of a conditional use permit approval aggrieved by the decision of the Planning Director pursuant to subsection (b) of this section may request an appeal before a hearing officer under chapter 102, article VI, division 2 by filing the notice required by that article within 30 days of the date of the written decision of the Planning Director.

Sec. 110-74. Reserved.

Sec. 110-75. Reserved.

Sec. 110-76. Developments of Regional Impact and Development Agreements.

Notwithstanding anything contained in this article or elsewhere in this Land Development Code, when a conditional use is also a Development of Regional Impact or is to be the subject of a Development Agreement under the Florida Local Government Development Agreement Act (F.S. Section 163.3220 et seq.) the final development approval, and the approval of any deviations therefrom, shall be reserved to the BOCC as provided by general law.

Secs. 110-77—110-95. Reserved.

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ARTICLE IV. PLAT APPROVAL

Sec. 110-96. Plat Approval and Recording Required.

(a) Except as provided in subsections (b) and (c) of this section, plat approval shall be required for:

(1) The division of a parcel of land into three or more parcels of land;

(2) The division of a parcel of land into two parcels of land where the land involved in the division was previously divided without plat approval; or

(3) The division of a parcel of land into two parcels of land where the disclosure statement required under subsection (e) of this section is not attached to the conveyance.

(b) No plat approval is required if the subdivision involved consists only of the dedication of a road, highway, street, alley or easement and the Planning Director finds that it is not necessary that a plat be recorded. In lieu of recording a plat, the dedication shall be required by deed and shall be subject to compliance with the submission of a grading, paving and drainage plan which will meet the requirements of these regulations and the posting of an improvement guarantee or bond as required under Section 110-100 before the acceptance of the dedication by the BOCC.

(c) No plat of any subdivision shall be entitled to be recorded in the office of the Clerk of the Circuit Court until it shall have been approved by the BOCC in the manner prescribed herein and certified by the clerk.

(d) If a plat has been previously approved and recorded, technical or minor changes to the plat may be approved through a lot line adjustment pursuant to Section 110-110, or if the changes meet the requirements of s. 177.141, Florida Statutes. All other changes shall be considered a replat in accordance with the provisions of this article.

(e) The conveyance of land that involves the division of the land into two parcels where plat approval is not obtained pursuant to this article shall include the following disclosure statement:

The parcel of land described in this instrument is located in the unincorporated areas of the county. The use of the parcel of land is subject to and restricted by the goals, objectives, and policies of the Monroe County Comprehensive Plan and the Land Development Code. The land development regulations provide that no building permit shall be issued for any development of any kind unless the proposed development complies with each and every requirement of the regulations, including minimum area and density requirements for residential development. You

are hereby notified that under the Monroe County Land Development Code the division of land into parcels of land which are not approved as platted lots under the regulations confers no right to develop a parcel of land for any purpose.

Sec. 110-97. General Standards for Plat Approval.

(a) No final plat shall be approved unless the plat is consistent with the purposes, goals and objectives of the Comprehensive Plan, this Land Development Code, applicable provisions of state law, the provisions governing the development of land set forth in chapter 130, and the procedures set forth in this article.

(b) In those areas where the Florida Keys Aqueduct Authority (FKAA) certifies that it can furnish an adequate supply of water to the property to be platted, water distribution systems shall be provided and constructed and shall become the property of the FKAA and shall be maintained and operated by the FKAA in accordance with its water main extension policy.

(c) Sewers, sewage treatment plants, and septic systems shall meet all requirements of the applicable county municipal service district, or any successor thereto, the Florida Department of Environmental Protection, and the Florida Department of Health.

(d) No plat shall be approved which creates an unbuildable lot under the provisions of this Land Development Code and/or exceeds the maximum density of the future land use category or the land use district, whichever is less, except for wetland areas, which may be included in a plat as conservation areas.

(e) No plat shall be approved unless it is prepared by a land surveyor licensed in the state.

(f) Lands within the IS, IS-M, IS-V, IS-D, URM, URM-L and CFV districts shall not be platted, replatted or otherwise reconfigured in any manner that would allow the number of proposed lots or units to exceed the number of lots or parcels that lawfully existed as of September 15, 1986.

(g) All open spaces required for a tract of land shall be preserved as dedicated open space for each individual habitat type through the use of a conservation easement or a similar legal instrument.

(h) Blocks.

(1) The length, width and shape of each block shall be determined with due regard to:

a. Provision of adequate building sites suitable to the special needs of the type of use contemplated;

b. Regulations as to lot sizes and dimensions;

c. Need for convenient access, circulation, control and safety of street traffic; and

d. Limitations and opportunities of topography.

(2) Block lengths shall not exceed 1,320 feet, unless topographic or other features dictate otherwise, nor be less than 400 feet. Block width shall be no less than 200 feet except for single row or reverse frontage blocks.

(3) Pedestrian crosswalks, not less than six feet wide in land use (zoning) districts oriented to residential use, and not less than 12 feet wide in land use (zoning) districts oriented to nonresidential use, shall be required where deemed essential by the Planning Director and/or County Engineer to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.

(i) Lots.

(1) The lot size, width, depth, shape and orientation, and the minimum setbacks shall be appropriate for the location of the subdivision and for the type of development and use contemplated in accordance with the Comprehensive Plan and this Land Development Code.

(2) Lot dimensions shall conform to the following:

a. Residential lots, where not serviced by public or private sewer systems, shall be sufficient to accommodate an on-site treatment and disposal system and drain field meeting standards determined by the county health department.

b. Depth and width of lots reserved or laid out for nonresidential uses shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

(3) Corner lots for residential use shall have a primary and secondary front yard in accordance with Section 131-1.

(4) Side lot lines shall be substantially at right angles or radial to road lines, where possible.

(j) Roads.

(1) The arrangement, character, extent, width, grade and location of all roads shall conform to all the county plans and shall be considered in relation to existing and planned streets, topographical conditions, public convenience and safety, and in their appropriate relation to the proposed uses of the land to be served by such roads.

(2) Right-of-way shall be provided and dedicated to the public in accordance with the following:

a. State roads: as determined by the Florida Department of Transportation;

b. County roads: 50 feet, with 25 feet on either side of centerline.

(3) Roads shall be located to provide access to all adjoining land at intervals of not more than one-quarter mile (1,320 feet) unless blocked by a natural obstacle. Access to all adjoining property must be provided by the developer at his expense if any of the developer's actions block natural or existing access.

(4) Names of subdivisions and roads previously used in the county shall not be given to new subdivisions and roads. Roads that form extensions, or are located along the general projections of existing roads, shall be named after the existing roads.

(5) Street markers and traffic-control signs shall be installed at the expense of the developer in accordance with the county's typical standard construction details.

(6) The arrangement of roads in a subdivision shall either:

a. Provide for the continuance or appropriate projection of existing principal roads in surrounding areas; or

b. Conform to a plan for the neighborhood to meet a particular situation where topographical or other conditions make continuance or conformance to existing roads impracticable.

(7) Minor roads shall be laid out to discourage their use by through traffic.

(8) Where a subdivision abuts or contains existing or proposed arterial roads, the county engineer may require marginal-access roads, reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with rear service alleys, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

(9) Reserve strips controlling access to roads shall be prohibited except where their control is placed under the county, with conditions approved by the county engineer.

(10) Roads with centerline offsets of less than 125 feet at points of intersection with other roads shall be avoided where possible.

(11) A tangent of at least 100 feet shall be introduced between reverse curves on arterial and collector roads if required by the county engineering department.

(12) When connecting road lines deflect from each other at any one point by more than ten degrees, they shall be connected by a curve with a radius adequate to ensure a sight distance of not less than 300 feet for minor and collector streets.

(13) Roads shall be laid out so as to intersect as nearly as possible at right angles, and no road shall intersect any other street at less than 80 degrees.

(14) Property lines at road intersections shall be rounded with a minimum radius of 25 feet, or a greater radius where the county engineer may deem it necessary. The county engineer may permit comparable cutoffs or chords in place of rounded corners.

(15) Half-roads shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with this Land Development Code, and where the county engineer finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever a half-road is adjacent to a tract to be subdivided, the other half of the road shall be platted within such tract.

(16) Dead-end roads, designed to be so permanently, shall be provided at the closed end with a turnaround having an outside roadway diameter of at least 70 feet, and a road property line diameter of at least 100 feet, or may be provided with a "T" type turnaround as may be approved per "Standard Specifications and Details of Monroe County" by the county.

(17) Road grades, including bridge approaches, shall not exceed six percent and shall include properly designed vertical curves.

(18) Paved roads shall be paved at least 20 feet wide on a minimum base width of 22 feet and a minimum subgrade width of 24 feet, all as required in the county's typical standard construction details.

(19) Stabilized shoulders seven feet wide shall be provided for public parking and safety alongside roads and streets.

(20) The minimum crown elevation of all roads in the county shall be plus 4.0 msl.

(21) The developer, at his expense, shall install road name signs at each intersection of the subdivision, including entrance roads, of durable and sound construction in accordance with Standard Specifications and Details of Monroe County.

(k) Easements.

(1) Except as provided in subsection (k)(2) of this section, easements for drainage and utilities shall be provided along lot lines of no less than six feet on both sides of the lot lines thus creating easements a minimum of 12 feet wide along the lot lines.

(2) Easements for waterlines provided by the Florida Keys Aqueduct Authority shall be provided along the front lot line within the public right-of-way, and shall be of sufficient size to provide access for maintenance and repair and at least 12 feet wide.

(3) Where a subdivision is traversed by a watercourse, drainageway or channel, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse, and such further width or construction, or both, as will be adequate for the purpose. Parallel roads may be required in connection therewith. Maintenance easements of 15 feet shall be required along drainage canals.

(l) Public sites and open spaces. Where a proposed park, playground, school or other public use shown is located in whole or in part in a subdivision, the BOCC may require the dedication or reservation of such area within the subdivision.

(m) Monuments.

(1) Concrete monuments four inches in diameter or four inches square and not less than two feet long, with a flat top, shall be set at all corners, at all points where the street lines intersect the exterior boundaries of the subdivision, and at angle points and points of curve in each road. The top of the monument shall have an indented cross to properly identify the location and shall be set flush with the finished grade.

(2) All other lot corners shall be marked with iron pipes not less than three-quarters inch in diameter and 18 inches long and driven so as to be flush with the finished grade.

(n) No plat shall be approved unless it includes the following notice:

"NOTICE TO LOT PURCHASERS AND ALL OTHER CONCERNED INDIVIDUALS

Purchase of a platted lot shown hereon confers no right to build any structure on such lot, or to use the lot for any particular purpose, or to develop the lot. The development or use of each lot is subject to, and restricted by, the goals, objectives, and policies of the adopted Comprehensive Plan (plan) and Land Development Code implementing the plan; therefore, no building permits shall be issued by the County unless the proposed development complies with the Comprehensive Plan and the Land Development Code."

Sec. 110-98. Preliminary plat approval.

(a) Generally. All applicants for approval of a plat involving five or more lots may submit a preliminary plat for approval in accordance with the provisions of this section.

(b) Application. If an applicant elects to submit a preliminary plat, an application for preliminary approval shall be submitted to the Planning Director in accordance with the provisions of this section, accompanied by a nonrefundable fee as established from time to time by the BOCC. The application shall contain the information required on a form provided by the Planning Director.

(c) Staff review. After a determination that the application for preliminary plat approval is complete under the provisions of Section 110-4, the Planning Director shall submit the application to the DRC, which shall prepare a recommendation and report for the Planning Commission.

(d) Public hearing and action by the Planning Commission. The Planning Commission shall conduct a public hearing on an application for preliminary plat approval of a subdivision involving five or more lots, in accordance with the requirements of Sections 110-6 and 110-7. The Commission shall review such applications, the recommendation of the DRC, and the testimony at the public hearing, and shall recommend granting preliminary plat approval, granting approval subject to specified conditions, or denying the application at its next meeting following submittal of the report and recommendation of the development review committee.

(e) Effect of approval of preliminary plat. Approval of a preliminary plat shall not constitute approval of a final plat or permission to proceed with development. Such approval shall constitute only authorization to proceed with the preparation of such documents as are required by the Planning Director for a final plat.

(f) Limitation on approval of preliminary plat. An application for final plat approval shall be filed within one year of the date of preliminary plat approval. Unless an extension is granted by the BOCC, failure to file such an application automatically shall render null and void the preliminary approval previously granted by the board.

Sec. 110-99. Final Plat Approval.

(a) Generally. All applicants for approval of a plat shall submit a final plat for approval in accordance with the provisions of this section.

(b) Application. It shall be the responsibility of the developer to complete, have in final form, and submit to the Planning Director for final processing the final plat, along with all final construction plans, required documents, exhibits, legal instruments to guarantee performance, certificates properly executed by all required agencies and parties as required in this article and in Florida Statutes, and the recording fee, and any other documents or information as are required by the Planning Director. After receipt of a complete application for final plat approval, as determined in accordance with Section 110-4, the Planning Director shall submit the application and accompanying documents to the Development Review Committee.

(c) Review and action by Development Review Committee. The Development Review Committee (DRC) shall review all applications for final plat approval.

(1) If the DRC determines that a final plat for a subdivision involving fewer than five lots conforms to the substantive and procedural requirements of this Land Development Code, after considering the comments of the DRC, the Planning Director shall approve the final plat or approve it with conditions Such final plats that are approved by the Planning Director shall be placed on the bulk approval agenda of the next regularly scheduled meeting of the BOCC at a meeting location which is closest to the subject property or next closest to the subject property , unless the applicant desires a later meeting, and shall become final unless removed from the bulk approval agenda. If a final plat is removed from the bulk approval agenda, the BOCC shall not modify or reject the decision of the Planning Director unless the BOCC finds that the record does not contain competent substantial evidence to support approval. If the Planning Director denies final plat approval, the applicant may appeal such denial to the BOCC, which shall consider the application and any additional testimony submitted by the applicant and other persons and shall approve the final plat, approve it with conditions, or deny final plat approval.

(2) For a final plat for a subdivision involving five or more lots, if, following DRC review, the Planning Director determines that the plat conforms to the substantive and procedural requirements of this Land Development Code, the DRC shall recommend to the Planning Commission approval of the final plat or approval with conditions. If the Planning Director finds that the plat does not substantially conform to the substantive and procedural requirements of this Land Development Code, the Planning Director shall recommend denial, specifying the area of nonconformity.

(d) Review and action by the Planning Commission. The Planning Commission shall review all applications for final plat approval involving five or more lots and the recommendation of the DRC. If the Planning Commission finds that the final plat conforms to the substantive and procedural requirements of this Land Development Code, the Planning Commission shall recommend to the BOCC approval of the final plat, or approval with specified conditions.

(e) Public hearing by the BOCC. The BOCC shall conduct a public hearing on all applications for final plat approval involving five or more lots in accordance with the procedures of Section 110-6(c).

(f) Action by the BOCC. For all applications for plat approval, involving five or more lots the BOCC shall review the application, the recommendations of the DRC and the Planning Commission, and the testimony at the public hearing, and shall grant final plat approval, grant approval subject to specified conditions, or deny the application, in accordance with the provisions of Section 110-7.

Sec. 110-100. Improvement Guarantees.

(a) Generally. An improvement guarantee to guarantee installation of all improvements required by this chapter or as a condition of approval shall be required as part of final plat approval in a form and amount approved by the Planning Commission and the County Attorney.

(b) Guarantee amount. The amount of the improvement guarantee shall cover all construction costs, the owner's engineering and platting costs, the county's engineering and inspection costs, and preacceptance maintenance costs. The costs may be reviewed periodically for accuracy and are subject to adjustment upward or downward by the Planning Director based on existing economic conditions at the time of review and on the recommendation of the DRC. The estimated cost of the water distribution network and main extensions shall be determined by the Florida Keys Aqueduct Authority after review and approval of the water distribution system. The cost may be estimated by the developer's engineer, but in such event shall be subject to review, revision if necessary, and approval by the FKAA. The guarantee shall be in the following minimum amounts unless the owner can show that certain of the costs have already been paid:

(1) The construction cost:

a. 130% of the estimated construction cost approved by the county engineer; or

b. 110% of a binding contract with a contractor qualified for the proposed work;

(2) The owner's engineering and platting cost: at a cost verified by the engineer and surveyor;

(3) The county engineering and inspection costs: based on an estimate by the county engineer of costs to be incurred;

(4) The pre-acceptance maintenance cost: ten percent of the construction cost; and

(5) The damage and nuisance guarantee: five percent of the construction cost.

(c) Forms. One of the following forms of guarantee shall be submitted to the BOCC as part of an application for final plat approval.

(1) Cash escrow.

a. Establishing account. An escrow account in the amount required shall be established with a federally insured financial institution (hereinafter referred to as the escrowee) in a form that meets the approval of the County Attorney. The account shall be administered by the escrowee in accordance with the provisions

of the escrow agreement to be negotiated by the county and the owner, developer and/or subdivider and approved by the County Attorney. Such agreement shall contain provisions for specific application of such funds; partial contract payouts; contract retention percentages until complete; proration of reduction of deposit excess; final escrow settlement; and other pertinent administrative matters as may be required.

b. Fund disbursement. The escrowee shall disburse funds from time to time for the purposes provided upon presentation of, and in accordance with, payouts ordered issued by the owner's engineer and approved by the county engineer. Such disbursements shall not be subject to approval or disapproval by the owner or escrowee or their agents other than the owner's engineer; however, for accounting purposes, the county shall send to the owner a copy of the approved engineer's estimate for payment at the time of county approval. Each payout order shall be accompanied by all appropriate sworn statements, affidavits and supporting waivers of lien in full compliance with state law.

c. Excess fund balance. If, at any time, the county engineer shall notify the escrowee in writing that the balance of funds then remaining undisbursed under the escrow account is more than sufficient to cover the cost of construction fees and maintenance hereinabove provided, and the notice shall specify the reduced balance then deemed sufficient, and if the escrowee shall concur in such determination, the escrowee shall pay over to the owner any excess of funds over such reduced balance then remaining undisbursed under the escrow account.

(2) Letter of credit. The subdivider or owner may file a straight commercial letter of credit from any financial institution acceptable to the BOCC in a form acceptable to the County Attorney. The letter of credit must provide that the issuing financial institutions will pay to the county, or as the county directs, such amounts as may be required to complete the improvements according to the approved specifications. The letter of credit shall provide that its amount will be reduced from time to time as payments for improvements approved by the county engineer are made. The letter of credit shall be irrevocable for at least 36 months from the date of final plat approval and must provide that if any balance remains at the expiration of any time limit placed on it, the balance shall be deposited with the county in a cash escrow, a new letter of credit in the amount of the unpaid balance shall be issued, or a surety bond, as prescribed in subsection (c)(3) of this section, shall be provided. The letter of credit shall also provide that ten percent of the amount shall be retained until the county engineer and the Planning Director have approved the improvements required.

(3) Surety bond.

a. Form. The bond shall be in a form and with a bonding company approved by the County Attorney.

b. Time limit. The bond shall be payable to the county and enforceable on or beyond a date 36 months from the date of final plat approval. Release of any bond shall be conditioned on final approval and acceptance of the improvements by the county.

(d) Insufficient fund balance. If, at any time before the construction of all required improvements has been completed, the balance of funds remaining undisbursed under the escrow account or letter of credit is not sufficient, in the judgment of the Planning Director, to cover the cost of construction of the improvements and all engineering costs, including the engineering and inspection fees of the county, or if by reason of any order, decree or writ of any court, or for any other reason the funds in the escrow account are insufficient, the undisbursed balance of funds shall be withheld, shall not be diminished and shall be unavailable for the purposes provided herein, unless the owner increases the balance to such amount as shall be required by the county for such purposes, in the exercise of its judgment, or shall provide such other guarantee of performance as may be required by the county.

(e) Time limit. All guarantees shall provide that if required improvements are not installed (i.e., construction completed) within two years after approval of the final plat, the BOCC may deem the subdivider in default and proceed in accordance with the provisions of subsection (f) of this section.

(f) Default. In the event the Planning Director determines that the owner has failed to install proposed improvements in accordance with the approved plans and specifications or has failed to comply with the terms of the guarantees hereinabove set forth, the Planning Director, in consultation with the County Attorney, may take one or both of the following actions:

(1) Cash escrow and letter of credit. Advise the owner, in writing, of the failure, giving the owner 30 days to cure such default. If the owner fails to cure the default, the Planning Director may recommend to the BOCC that it declare the owner in default and, upon written notification to the escrowee of such declaration of default, all moneys on deposit pursuant to the escrow agreement or letter of credit shall and may be disbursed by escrowee solely upon authorization of the Planning Director, and the escrowee shall be released by the owner as to such payment; or

(2) Surety bond. Inform the bonding company in writing of default by the owner and request that it take necessary actions to complete the required improvements.

Sec. 110-101. Pre-Acceptance Maintenance of Public Improvements.

Until public improvements have been accepted by the BOCC, the applicant/developer shall be responsible for the maintenance of such improvements. A maintenance bond or letter of credit in the amount of ten percent of the construction cost of the improvements shall be maintained in a form acceptable to the County Attorney until acceptance of the public improvement.

Sec. 110-102. Damage and Nuisance Guarantee.

The guarantee of completion of public improvements to be executed prior to recording of a final plat of subdivision also shall provide for repair of damages and abatement of nuisances with respect to existing and subsequently installed streets, sidewalks, curbs and gutters, parkways, culverts, catch basins, and/or storm sewers for a period of 24 months after acceptance of the improvement by the BOCC.

Sec. 110-103. Acceptance of Public Improvements.

If any plat of subdivision contains public streets, easements or other public improvements that are dedicated thereon as such, the acceptance of public improvements shall be made only by the adoption of a resolution by the BOCC after there has been filed with the county a certification by the Planning Director stating that all, or individual, public improvements required to be constructed or installed have been fully completed, and that the construction or installation thereof has been inspected by and approved by him/her or his/her designated representative as being in conformity with the standards of the Comprehensive Plan. The applicant/developer shall be required to provide a certified as-built survey of any public improvements to be dedicated to the public prior to acceptance by the BOCC.

Sec. 110-104. Limitations as to County Maintenance.

Nothing in this article shall be construed to mean that the BOCC shall take over for county maintenance any road, street, alley, public parking or other public area, or drainage facility related thereto, except those improvements designed and built in accordance with the county's standards and requirements and accepted pursuant to Section 110-103 or taken over for county maintenance by other specific action of the BOCC. Nothing in this Land Development Code shall be construed to obligate the county to drain any land, except that which lies in the public rights-of-way and drainage easements.

Sec. 110-105. Maintenance of Private Improvements.

If any plat of subdivision contains streets, easements or other improvements to be retained for private use, the final plat for recordation shall indicate to the satisfaction of the Planning Director and the County Attorney the method or entity by which maintenance of the private improvements shall be performed.

Sec. 110-106. Recording of Final Plat.

Upon approval or approval with conditions, the applicant shall record the final plat in the office of the Clerk of the Circuit Court of the county and a copy of the recorded plat shall be provided to the Planning Director. Such recording shall be completed within 90 days of approval of the final plat, or such approval shall be deemed null and void.

Sec. 110-107. Variances to Required Subdivision Improvements.

Where the BOCC finds that exceptional hardship may result from strict compliance with the provisions of the plan regarding street design standards, bikeways, drainage standards, easements, permanent markers, sewage and electricity utilities (excluding electricity over which the Public Services Commission of the State of Florida exercises jurisdiction), public sites and excavations within dedicated public rights-of-way, the BOCC, on the recommendations of the Planning Director and the Planning Commission, may grant variances to the regulations herein; however, in no event shall a variance be granted for more than the minimum necessary to overcome the hardship, or where the variance would create a condition in violation of the specific provisions for that land use (zoning) district, or reduce the traffic capacity of adjacent streets, or otherwise violate the intent of this Land Development Code. In no event shall a variance be granted which would violate the environmental standards in Chapter 118. Any applicant requiring a variance shall state clearly in the original application for plat approval the variance required, and any variances granted shall be clearly delineated as such on the approved and recorded plat.

Sec. 110-108. Vacation.

The vacation of any plat or portion thereof shall be accomplished in the same manner as for approval of the plat.

Sec. 110-109. Replat.

Any changes to a recorded final plat or portion thereof shall be accomplished by a replat and approved in the same manner as for approval of the plat, unless the changes meet the requirements of Sec.110-96(d).

Sec. 110-110. Lot Line Adjustment.

(a) A lot line adjustment may be applied for lots in a platted subdivision, provided that each lot is a duly recorded lot as shown on a plat approved by the County.
(b) The resulting lots configured in the lot line adjustment process must meet the minimum requirements for a building site pursuant to the Land Development Code and Comprehensive Plan. All resulting lots will conform to the site development standards of the applicable zoning district.

(c) A lot line adjustment approval will not result in the creation of additional lots or building sites, nor result in the encroachment into any public easement, right-of-way, or other required areas.
(d) Parcels that have frontage on a county or state road must continue to have such frontage and access after the adjustment. Each resulting lot must have legal access, utilities (if available), water, sewer and storm drainage.
(e) The information submitted must have adequate detail so as to permit Planning and Environmental Resources Department staff a determination that the resulting lots will meet the requirements of a building site.
(f) Applicant shall submit a written consent from all property owners.

Sec. 110-111. Lot Line Adjustment Procedures

(a) Pre-Application meeting with Planning and Environmental Resources Department staff to identify issues that need to be considered in the process.
(b) Upon receipt of the submittal requirements, the Planning and Environmental Resources Department shall determine if the application is complete. The Planning and Environmental Resources Department may request any additional information, as deemed necessary, before the application is deemed complete. Staff will notify the applicant of any missing information or deficiencies in the application. The Application and required documents will be reviewed by the Planning and Environmental Resources Department staff for compliance with the Land Development Code, Comprehensive Plan and legal requirements.
(c) The Planning and Environmental Resources Department will issue a decision to approve or deny the application. Once approved, staff will notify the applicant to prepare final recording documents.
(d) Once approved, a lot line adjustment does not become effective until recorded in the public records of Monroe County, Florida:
(e) Applicant shall submit a written consent from all property owners. Both affected property owners shall be applicants for the lot line adjustment.

Secs. 110-112—110-131. Reserved.

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ARTICLE V. DEVELOPMENT AGREEMENT AUTHORIZATION

Sec. 110-132. Purpose and Intent.

The purpose of this article is to allow the county to enter into development agreements that meet the requirements of the Florida Local Government Development Agreement Act, F.S. §§ 163.3220-163.3243. The development agreement provides assurance to a developer that upon receipt of his permits under the county's Comprehensive Plan and Land Development Code he or she may proceed in accordance with existing ordinances and regulations, subject to the conditions of the development agreement. This article will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. A development agreement is in addition to all other local development permits or approvals required by the county land development regulations. A development agreement does not relieve the developer of the necessity of complying with all county Comprehensive Plan elements and Land Development Code in effect on the date that the agreement is executed.

Sec. 110-133. Development Agreement Approval Procedures.

(a) The BOCC shall have authority to enter into a development agreement by resolution with any person having a legal or equitable interest in real property located within the unincorporated areas of the county if:

(1) The development agreement meets all of the requirements of the Florida Local Government Development Agreement Act, F.S. §§ 163.3220—163.3243; provided, however, that the duration of the development agreement shall not exceed ten (10) years, and any duration specified in a development agreement shall supersede any conflicting duration otherwise specified in this chapter;

(2) The development was initially approved pursuant to a development order issued prior to the effective date of the ordinance from which this article is derived or is proposed by another governmental entity;

(3) The development agreement shall be considered at two public hearings with the first public hearing conducted by the Planning Commission; and approved by the BOCC at the second public hearing, or thereafter;

(4) Notice of such public hearings shall be given in accordance with both F.S. § 163.3225, and Section 110-5.

(5) Submission of an application for development agreement, in a form specified by the Planning Director and accompanied by a nonrefundable fee.

(b) Requirements of a development agreement.

(1) A development agreement shall include the following:

a. A legal description of the land subject to the agreement, and the names of its legal and equitable owners;
b. The duration of the agreement;
c. The development uses permitted on the land, including population densities, and building intensities and height;
d. A description of public facilities that will service the development, including who shall provide such facilities; the date any new facilities, if needed, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of the development;
e. A description of any reservation or dedication of land for public purposes;
f. A description of all local development permits approved or needed to be approved for the development of the land;
g. A finding that the development permitted or proposed is consistent with the local government's comprehensive plan and land development regulations;
h. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens; and
i. A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the developer of the necessity of complying with the new law governing said permitting requirements, conditions, term, or restriction.

(2) The development agreement may provide that the entire development or any phase thereof be commenced or completed within a specific period of time.

(c) Periodic review of a development agreement. The County shall review land subject to a development agreement at least once every 12 months to determine if there has been demonstrated good faith compliance with the terms of the development agreement. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of the development agreement, the agreement may be revoked or modified by the County.

(d) Recording and effectiveness of a development agreement. Within 14 days after the County enters into a development agreement, the County shall record the agreement with the clerk of the circuit court. A development agreement is not effective until it is properly recorded in the public records of the County. The burdens of the development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties of the agreement.

(e) Modification or revocation of a development agreement to comply with subsequently enacted state and federal law. If state or federal laws are enacted after the execution of a development agreement which are applicable to and preclude the parties' compliance with the terms of a development agreement, such agreement shall be modified or revoked as is necessary to comply with the relevant state or federal laws.

(f) This article is not intended to amend or repeal any existing county ordinance or regulation. To the extent of any conflict between this article and other county ordinances or regulations, the more restrictive is deemed to be controlling.

Secs. 110-134—110-139. Reserved.

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ARTICLE VI. BUILDING PERMITS

Sec. 110-140. Building Permit Required.

A building permit is required prior to the following:

(a) Any work specified in Chapter 6 of the Monroe County Code of Ordinances;

(b) Any change in the land use intensity, density, or use of land authorized as a permitted as-of-right use under this Land Development Code;

(c) Any change in the use of land or structure from a permitted as-of-right use within a land use district to another listed permitted as-of-right use; and

(d) Any development authorized by conditional use approval.

Sec. 110-141. Letters of Coordination.

Prior to submittal of a building permit application to the Building Department, the following letters of coordination are required as determined by the Building Official:

(a) Florida Department of Health and Department of Environmental Protection (or appropriate agency having jurisdiction) letters of coordination for wastewater facilities; and

(b) Applicable water provider, wastewater provider, public utilities or private utility provider.

Sec. 110-142. Reserved.

Sec. 110-143. Reserved.

Sec. 110-144. Unlawful Land Uses.

The term *unlawful land use*, as used in this section, means any land use that has not received a permit or other official approval from the Division of Growth Management and cannot be approved on a given site pursuant to the permitted uses set forth in chapter 130, article III of this Land Development Code and/or policies related to permitted land uses in the Comprehensive Plan.

(a) Building permit application improving a known, unlawful land use. The Planning and Environmental Resources Department shall not approve any building permit application for an improvement to a structure with a known, unlawful land use until the unlawful land use is either a) permitted in accordance with the Land Development Code or b) eliminated.

(b) Building permit application not related to a known, unlawful land use. The Planning and Environmental Resources Department may approve a building permit application on a site

with a known, unlawful land use if it is determined that the scope of work would not improve or facilitate the unlawful land use. In the event of such an approval, the county shall place a notation on the permit that the approval does not condone or approve the unlawful land use and inform the applicant that the property owner is subject to possible code compliance prosecution.

(c) Building permit application improving a known, unlawful land use addressing public health and safety. Building permit applications that are limited exclusively to addressing imminent risks to public health and safety may be approved under any circumstance. By way of illustration and not limitation, building permit applications may be approved for repairs and/or replacement of roofs, other building structural components, plumbing and/or electric - however only to the extent necessary to address imminent risks to public safety and health as determined by the Planning Director, in consultation with the Building Official, County Engineer and/or Fire Marshal to determine the allowable extent of such improvements. In the event of such an approval, the county shall place a notation on the permit that the approval does not condone or approve the unlawful land use and inform the applicant that the property owner is subject to possible code compliance prosecution.

(d) Nonconforming use. Building permits applications may be approved for lawful, nonconforming uses in accordance with Section 102-56.

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Chapter 114 DEVELOPMENT STANDARDS

ARTICLE I. IN GENERAL

Sec. 114-1. Standards.

No structure or land shall be developed, used or occupied except in accordance with the standards of this chapter and other applicable standards of this Land Development Code and the Florida Building Code, nor shall any building permit be issued unless the proposed use is or will be served by adequate public or private facilities.

Sec. 114-2. Adequate Facilities and Review Procedures.

(a) *Level of Service Standards (LOS).* All development shall be served by adequate public facilities in accordance with the following standards:

(1) *Transportation/Roadways.*

a. U.S. 1 shall have sufficient available capacity to operate at LOS C for the overall arterial length and the 24 roadway segments of U.S.1, as measured by the U.S. 1 Level of Service Task Force Methodology, at all intersections and roadway segments. In addition, all segments of U.S. 1, as identified in the U.S. 1 Level of Service Task Force Methodology, which would be impacted by a proposed development's access to U.S. 1, shall have sufficient available capacity to operate at LOS C.

b. Development may be approved, provided that the development in combination with all other permitted development will not decrease travel speed by more than five percent (5%) below LOS C, as measured by the U.S. 1 Level of Service Task Force Methodology. While development may be approved within 5% of LOS C, the proposed development shall be considered to have an impact that needs mitigation. Development mitigation may be in the form of specific improvements or proportioned shared contribution towards improvements and strategies identified by the County, and/or FDOT to address any level of service degradation beyond LOS C and/or deficiencies.

c. All paved County roads shall have sufficient available capacity to operate at or within 5% of a LOS D as measured by the methodology identified in the most recent edition of the Highway Capacity Manual. While development may be approved within 5% of LOS D, the development shall be considered to have an impact that needs mitigation. Development mitigation may be in the form of specific improvements or proportioned shared contribution towards improvements and strategies identified by the County, and/or FDOT to address any level of service degradation beyond LOS D and/or deficiencies.

d. The development of one single family residence on a single parcel shall be considered de minimis and shall not be considered to impact road capacity established in this subsection.

e. The County shall post on the Monroe County website informing the public of the available transportation capacity for each road segment of U.S. 1 as described in the county's biennial public facilities capacity report. The available capacity shall be expressed in terms of number of trips remaining until the adequate transportation facilities standard is exceeded.

f. The County, in coordination with the FDOT, shall continue the systematic traffic monitoring program to monitor peak season traffic volumes at permanent count stations and travel speeds on the overall length of U.S.1 and on each of the 24 study segments of U.S.1, and to determine the cumulative impact of development and through traffic. The County shall coordinate with municipalities in the review of the systematic traffic monitoring program to monitor traffic volumes and travel speeds of U.S.1 as well as on each of the 24 study segments on U.S.1. The County and municipalities shall coordinate with FDOT to evaluate segments with deficiencies of LOS to determine necessary improvements and strategies to address any degradation and/or deficiencies.

(2) *Solid waste*.

Sufficient capacity shall be available at a solid waste disposal site at a level of service of 11.41 pounds per capita per day. The county solid waste and resource recovery authority may enter into agreements, including agreements under F.S. Section 163.01, to dispose of solid waste outside of the county.

(3) *Potable water*.

The County will coordinate with FKAA in its efforts to assure sufficient potable water from an approved and permitted source shall be available to satisfy the projected water needs of the proposed development at the levels of service listed below. Approved and permitted sources shall include cisterns, wells, FKAA distribution systems, individual water condensation systems, and any other system that complies with state standards for potable water.

a. Overall LOS: 100 gal./capita/day
b. Minimum pressure: 20 pounds per square inch at customer service point
c. Minimum quality: As defined by Chapter 62-550 F.A.C.

(4) *Sanitary Sewer*.

Sufficient wastewater treatment and disposal shall be available to satisfy the projected needs of the development or use according to the following level of service standards:

a. The capacity level of service standard: 167 gallons per day per equivalent dwelling unit (EDU).
b. The wastewater treatment level of service standards:

	Mg/L			
	BOD	TSS	TN	TP
On-site Sewage Treatment and Disposal Systems	10	10	10	1
Design flows less than 100,000 gpd (BAT)	10	10	10	1
Design flows greater than or equal to 100,000 gpd (AWT)	5	5	3	1

BOD: Biochemical Oxygen Demand
TSS: Total Suspended Solids
TN: Total Nitrogen
TP: Total Phosphorus
BAT: Best Available Technology
AWT: Advanced Wastewater Technology

(5) *Drainage/stormwater.*

Treatment and disposal facilities shall be designed to meet the design and performance standards established in 62-25, F.A.C., and designed and operated so that off-site discharges meet State water quality standards, as set forth in 62-302, F.A.C.

(6) *Schools.*

Sufficient school classroom capacity shall be available to accommodate all school-age children to be generated by the proposed development.

(7) *Recreation and Open Space.*

Sufficient available recreation and open space facility capacity shall be available at the levels of service listed below:

a. 1.5 acres per 1000 functional population of passive, resource-based neighborhood and community parks; and
b. 1.5 acres per 1000 functional population of activity-based neighborhood and community parks within each of the Upper Keys, Middle Keys, and Lower Keys subareas.

(b) *Review of capacity.*

(1) *Purpose*. It is the purpose of this subsection is to ensure that the purposes of the Monroe County Comprehensive Plan are achieved and to provide an orderly and equitable procedure for the issuance of development permits, other than permits for additions to existing structures and other development activity not requiring additional public facilities.

(2) *Service areas.* For the purposes of this subsection, the unincorporated areas of the county shall be divided into the following three public facilities service areas:

a. Upper Keys Service Area: The unincorporated areas of the county north of the Whale Harbor Bridge;
b. Middle Keys Service Area: The unincorporated areas of the county between the Seven Mile Bridge and Whale Harbor Bridge; and
c. Lower Keys Service Area: The unincorporated areas of the county south and/or west of the Seven Mile Bridge.

(3) *Biennial Assessment of public facilities capacity.* The Planning Director shall submit to the BOCC a report of the capacity of available public facilities in each of the service areas established in subsection (b)(2) of this section. The report shall be based on standard analytical methodologies and shall include a projection of the amount of residential and nonresidential growth that can be accommodated in each of the service areas during the ensuing year without exceeding safe and efficient provision of essential public services. The report shall clearly identify areas of inadequate facility capacity, which are those areas with capacity below the adopted level of service standards as provided in subsection (a)(1)—(7) of this section, and areas of marginally adequate facility capacity, which are those areas at the adopted level of service standard or which are projected to reach inadequate capacity within the next 12 to 24 months. In addition, the report shall include growth trends and projections and a development permit monitoring system for each service area.

(4) *Ratification of the service capacity report.* The BOCC shall consider and approve or approve with modifications the assessment of public facilities capacity. In the event the BOCC acts to increase the development capacity of any service area, the BOCC shall make specific findings of fact as to the reasons for the increase, including the source of funds to be used to pay for the additional capacity required to serve additional development to be permitted during the next 12 to 24-month period.

(5) *Review procedure.*

a. *Applicability*. In the event the approved assessment shows that projected growth and development during the next 12 to 24 months exceeds public facilities capacity that will be available to serve the projected growth, development in one or more of the service areas that will require any of the public facilities enumerated in subsection (a) of this section that have insufficient capacity to provide safe and efficient public services shall be subject to the procedure established in this section. Development that does not require the public facilities enumerated in subsection (a) of this section and that has sufficient capacity to provide safe and efficient public services shall not be subject to the procedure established in this section.
b. *Application for development.* As a condition of approval of a development order, all applicants for development shall file an application with the county in the form prescribed by the Planning Director, accompanied by a fee to be set by resolution of the BOCC. The application shall include a written evaluation (facilities impact report and traffic report) of the impact of the anticipated

development on the levels of service for public facilities and services and demonstrate that public facilities and services are available prior to or concurrent with the impacts of development.

c. *Areas of inadequate facility capacity*. The county shall not approve applications for development in areas of the county that are served by inadequate facilities identified in the biennial assessment of public facilities capacity report, except the county may approve development that will have no reduction in the capacity of the facility or where the developer agrees to increase the level of service of the facility to the adopted level of service standard. An applicant, except for persons applying for a single-family residence, shall provide a facilities impact report that demonstrates that:

1. For potable water, solid waste, sanitary sewer, and drainage facilities and services, one or more of the following conditions are met:

   i. The necessary facilities and services are in place at the time a development permit is issued; or
   ii. The necessary facilities and services are in place at the time a certificate of occupancy, or its functional equivalent is issued. Prior to commencement of construction, the applicant shall enter into a binding and legally enforceable commitment to the County to assure construction or improvement of the facility.

2. For recreational facilities, one or more of the following conditions are met:

   i. Conditions 1(i.) or 1(ii.), listed above; or,
   ii. The necessary facilities are in place no later than one (1) year after issuance of a building permit. Prior to commencement of construction, the applicant shall enter into a binding and legally enforceable commitment to the County to assure construction or improvement of the facility; or
   iii. In the case of acreage (land) for such parks and recreational facilities, land shall be dedicated to or acquired by the County prior to issuance of a building permit, or funds in the amount of the developer's fair share are committed no later than the approval to commence construction; or
   iv. An enforceable development agreement guarantees that the necessary facilities and services will be in place with the issuance of the applicable development permit. An enforceable development agreement may include, but is not limited to, development agreements pursuant to section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S.

3. For roads, one or more of the following conditions are met:

i. Conditions 1(i.) or 1(ii.) listed above; or
ii. A binding executed contract is in place at the time the development permit is issued which provides for the commencement of the actual construction of the required facilities or provision of services; or
iii. An enforceable development agreement guarantees that the necessary facilities and services will be in place with the issuance of the applicable development permit. An enforceable development agreement may include, but is not limited to, development agreements pursuant to section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S., or
iv. The proportionate share contribution or construction is sufficient to accomplish one or more mobility improvement(s) that will benefit a regionally significant transportation facility.

d. *Areas of marginally adequate facility capacity*. In areas of marginal facility capacity as identified in the current biennial assessment of public facilities capacity report, the county shall either deny the application or condition the approval so that the level of service standard is not violated. An applicant in these areas, except for persons applying for a single-family residence, shall provide a facilities impact report to demonstrate the standards in subsection (b)(5)c. of this section have been met.
e. *Facilities impact report requirements.* The facilities impact report required by this section shall use acceptable professional methodologies and standards inclusive of a cumulative traffic impact analysis, where necessary, as provided by the Planning Director.

(6) *Exemptions*. In addition to the exemptions from development described in subsection (3) of the definition of "development" in section 101-1, the following construction activities shall not be considered development for the purposes of this section only:

a. The rebuilding or restoration of a single-family residence damaged or destroyed by fire, calamity, or natural disaster if the rebuilding or restoration takes place within the footprint of the destroyed or damaged structure and the use of the structure remains single-family residential;
b. The replacement of a mobile home upon the same lot where the original was located as long as there is no increase in density or intensity of use;
c. The construction of fences;
d. The construction of concrete slabs for existing buildings;
e. The construction of driveways;
f. The construction of docking facilities and seawalls;
g. The construction of tiki and chickee huts;
h. The construction of swimming pools; or
i. The installation of storm shutters.
j. Development that does not require the public facilities enumerated in Section 114-2(a) and that has sufficient capacity.

k. Development that will not reduce the capacity of the affected facilities.
l. Notwithstanding the LOS established above, public transit facilities as defined and provided for within Section 163.3180(5)(h)2., F.S., are exempt from transportation concurrency.
m. Installation of solar collection systems on single-family residences.
n. Work conducted by public utilities within the right of way.
o. Installation of concrete cisterns for water collection.

Sec. 114-3. Surface Water Management Criteria.

(a) *Intent*. It is the intent of this section to establish guidelines and criteria for the safe management and disposal of stormwater runoff from developed areas that will minimize or eliminate any resultant adverse impacts on t he surface water, groundwater, and other natural resources of the county. These procedures are intended to assist in protection of the vital water resources of the Florida Keys, including the reservoir of freshwater on Big Pine Key and the near shore waters of the Gulf of Mexico, Florida Bay and the Atlantic Ocean.

(b) *Applicability*. Projects discharging to impaired waters or to Outstanding Florida Waters (OFW) are subject to additional requirements for mitigation of pollutant loads. Single-family and duplex residences are required to observe best management practices (BMP's) as identified in the sections of the county's manual of stormwater management practices clearly labeled as applicable to single-family and duplex residences and are subject only to the criteria, administrative procedures, and maintenance/retrofitting requirements identified in subsection (d) of this section and other applicable provisions of the Comprehensive Plan and this Land Development Code. All other applications for a county building permit are subject to all the criteria established in this section, except those identified in subsection (c). Except as specifically exempted in subsection (c) below, applications for a building permit for properties that are nonconforming to the standards of this section shall be subject to the requirements of Section 114-110.

(c) *Exemptions*. Notwithstanding any other provisions of this Land Development Code, the following activities are exempt from the requirements of this section, unless otherwise required by State or Federal Law:

(1) Maintenance work on existing mosquito drainage structures for public health and welfare purposes, provided that the activities do not increase peak discharge rate or pollution load;
(2) Routine maintenance and minor modification of existing impervious area other than single family and duplex residences provided it meets one of the following conditions:

a. The maintenance does not increase the existing impervious conditions of the site; or

b. The proposed maintenance is certified by a licensed engineer demonstrating that the maintenance will not increase the design peak discharge rate, volume pollution load of stormwater runoff, or impervious coverage of the site; or
c. The placement of a new structure does not change the designed peak discharge rate, volume or pollution load, or increase impervious coverage of site area of stormwater runoff from the site.

(3) Emergencies requiring immediate action to prevent material harm or danger to persons when obtaining a permit is impractical and would cause undue hardship in protection of property from fire, violent storms, hurricanes, or other hazards. A report of the emergency action shall be made to the county administrator as soon as practicable. All emergency action shall also be temporary in nature and be reversed or appropriately remedied after the emergency has passed;

(4) Single-family and duplex residences built on individual lots that are part of an existing subdivision, provided a stormwater management system approved by the Monroe County Growth Management Division or South Florida Water Management District is in place, and is provided as part of the application materials;

(5) Maintenance, repair, or installation of underground or overhead utility facilities, such as, but not limited to, pipes, conduits and vaults, including replacing the ground surface with in-kind material or materials with similar runoff characteristics;

(6) Installation of a new or replacement of an existing public drainage system, public combined sewer, public sanitary sewer, or public water supply system;

(7) Road and parking lot maintenance limited to the following activities:

a. Pothole and square cut patching;
b. Overlaying existing asphalt or concrete or impervious brick pavement with asphalt or concrete without expanding the area of coverage;
c. Shoulder grading;
d. Reshaping or regrading drainage ditches;
e. Crack sealing; and
f. Vegetation maintenance.

(d) *Single-family and duplex residences.*

(1) Criteria. All water-quality criteria as per subsection (f)(2) of this section.

(2) Administrative procedures. At building permit review, stormwater management criteria will be applied, generally to assess the applicant's compliance with these criteria through the implementation of best management practices. An applicant's stormwater management plan must comply with the criteria listed in subsection (f)(2)

of this section or, in the alternative, follow the guidelines outlined in the document entitled "Layman's Brochure" distributed by the county.

(3) Lot coverage expansion/retrofitting requirements. Those existing single-family and duplex lot owners wishing to expand impervious area shall bring the increase in impervious area into compliance with this section. Any substantial improvements shall be brought into compliance with the applicable provisions of the land development regulations.

(e) General criteria.

(1) Water management areas. Such areas shall be legally reserved to and maintained by the operational entity and be dedicated on the plat, deed restriction, or easements. Any change in the use of the property must comply with this regulation and any other requirements of the Comprehensive Plan and this Land Development Code. Stormwater management areas shall be connected to a public road or other location from which operation and maintenance means of access are legally and physically available to the operational entity, in accordance with county land development regulations governing subdivision of land.

(2) Environmental impacts. All surface water management plans shall be reviewed by the staff to evaluate anticipated impacts of the proposed work on the environment of the county. The following environmental features, among others, shall be used by the staff in evaluating impacts:

a. Wetlands;
b. Water bodies (including determination of discharge to impaired waters or OFW);
c. Intermittent (seasonally wet) ponds;
d. Mixed upland and wetland systems;
e. Pinelands;
f. Dunes/beach berms;
g. Hammock areas;
h. Uplands areas; and
i. Preferred habitat of rare and endangered plant and animal species.

(3) Legal operational entity requirements.

a. An acceptable, responsible entity that agrees to operate and maintain the surface water management system shall be identified in the building permit application. The entity must be provided with sufficient ownership so that it has control over all water management facilities authorized. The following are examples of entities that are acceptable:

1. Governmental agencies;

2. Nonprofit corporations, including homeowners associations, property owners associations, condominium owners associations, or master associations; or
3. The property owner as permittee, or his successors, if the property is wholly owned by the permittee and is intended to be so retained.

b. The entity must provide legally binding written documentation that it will accept the operation and maintenance of all surface water management systems prior to approval.

(4) Water quality considerations. All new surface water management systems shall be evaluated based on the ability of the system to prevent degradation of receiving waters and the ability to conform to state water quality standards established in F.A.C. chs. 62-25 and 62-302.530. Developments planning to discharge stormwater to outstanding impaired water bodies (as described by chapter 62-303 F.A.C.) or Florida waters shall provide greater treatment per section 40E-4.091, F.A.C., and as outlined in the SFWMD Environmental Resources Permit Applicant's Handbook, Vol. II, Appendix 'E,' as listed in subsection (f)(2) of this section.

(5) Water quantity considerations. All new stormwater management systems shall be evaluated on the ability of the system to prevent flooding of on-site structures, adjacent properties, roads, and road rights-of-way based upon antecedent rainfall conditions.

(f) Technical criteria.

(1) Water quantity.

a. Discharge. Off-site discharge is limited to amounts that will not cause adverse off-site impacts.

These amounts are:

1. Historic discharges based on natural site drainage patterns; or
2. Amounts determined in previous South Florida Water Management District or the county permit actions.

b. Drainage and flood protection criteria. The surface water management system shall be designed using a 24-hour rainfall duration and 25-year return frequency in computing allowable off-site discharge rate. Flood protection and floodplain encroachment standards shall be those established in the Monroe County Land Development Regulations and Comprehensive Plan. If post-development conditions are such that a volume greater than the retention and/or detention volume required for stormwater management is already being retained on site, that condition shall be maintained.

(2) Water quality.

a. Degradation of receiving water quality prohibited. Projects shall be designed so that discharges do not degrade the receiving water quality, as set forth in F.A.C. chs. 62-3, 62-302.530 and rule 62-330.010.

b. Retention/detention criteria. These criteria are based on the minimum treatment requirements of F.A.C. ch. 62302.530 and rule 62-330.010. The volume that needs to be retained or detained is dependent on the impervious area percent and whether the discharge is to impaired water bodies or OFW as defined in subsection (g)(2)b.5 of this section.

1. For projects that do not discharge directly to sensitive receiving waters, retention and/or detention shall be provided for the first inch of rainfall or 2½ inches of rainfall times the percent of impervious coverage dependent upon the percent of impervious surface. The retention or detention volumes shall be calculated according to the following formulae:

For impervious surface area percent of 40 percent or less:

Treatment volume (acre feet) = Disturbed area (acres) x 1 (inch)/12 (inches/foot)

For impervious surface area percent greater than 40 percent:

Treatment volume (acre feet) = Disturbed area (acres) x 2.5 (inches)/ 12 (inches/foot) x percent impervious area (%)/100(%)

Where treatment volume (acre feet) is the amount of stormwater treatment necessary, disturbed area (acres) is defined under subsection (f)(2)b.4. of this section, and impervious surface area percent is the total area of the impervious surface divided by the total property area times 100.

2. Projects that discharge directly to sensitive receiving waters shall comply with additional measures to assure water quality including:

i. A site specific pollutant loading analysis, for both initial and proposed conditions; and

ii. Provision for an additional 50% water quality treatment volume beyond that required by Section 114-3(f)(2)b.1.

Where applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, mitigation measures resulting in a net improvement of the water quality in the receiving body will be considered.

Requirements for submittal include a stormwater prevention plan, an operational phase pollution prevention plan, site-specific water quality evaluation, and all other requirements by permitting agencies.

3. Commercial or industrial projects shall provide at least one-half-inch of dry detention or retention pretreatment prior to discharge to a disposal structure such as a well, subsurface drainage basin, or trench, as part of the required retention/detention.
4. For the purposes of this section, the term "disturbed area" includes the entire lot except that the areas covered by the following best management practices shall be subtracted from the calculation of disturbed area:

    i. Forested upland areas/vegetative buffer strips (both natural and manmade) which will be retained intact and over or through which vehicular access or travel is not possible and will not occur; and
    ii. Open water surfaces and wetlands (salt marsh, buttonwood, mangroves, or freshwater marsh habitat types).

    It will be the responsibility of the applicant to affirmatively demonstrate that the best management practices used for the project are designed, constructed, and maintained properly.

5. For the purposes of this section, the term "discharging directly to sensitive waters" means the discharge of runoff via a pipe or channel outfall to the near shore waters, including canals, for which there is no i ntervening stormwater treatment system such as those listed in subsection (g)(2)b.3. of this section. Sensitive receiving waters are defined as: class I waters, class II waters, class III waters, outstanding Florida waters, impaired water bodies as defined by 62-303, F.A.C., and/or canals connecting with these waters.
6. Treatment storage recovery shall be estimated using a safety factor of two for retention systems with supporting infiltration tests.
7. Dry detention treatment volumes shall be offline allowing a bypass for storms greater than one, 2.5, or 3.2 inches as applicable.

(3) Construction considerations.

After complying with the water quantity and water quality criteria provisions of this section as applicable, if discharge structures are necessary, the following design construction considerations shall apply:

a. Discharge structures.

1. All design discharges from the site shall be made through and controlled by structural discharge facilities. Earth berms shall be used only to

disperse or collect sheet flows from or to ditches, swales, or other water channels, served by discharge structures.

2. Discharge structures shall be constructed so that they are stationary.
3. Discharge structures shall include gratings for safety and maintenance purposes. Removal of trash is mandatory if the stormwater management system discharges into surface waters and/or outstanding state waters.
4. Discharge structures shall include systems that would allow discharge from other than the top or bottom of the water column and shall include a cleanable jump area for the sediment removal. Discharge structures from areas with greater than 50 percent impervious area or systems with inlets in paved areas shall include a baffle, skimmer, or other mechanism suitable for preventing oil and grease from discharging to and/or from retention/detention areas.
5. Direct discharges, such as through culverts, storm drains, or weir structures, will normally be allowed to receive waters which by virtue of their large capacity and configuration, are easily able to absorb concentrated discharges. Such receiving waters might include existing storm sewer systems and manmade ditches, canals, the bay, channels, and the ocean.
6. Indirect discharges, such as overflow and spreader swales, are required where the receiving water or its adjacent supporting ecosystem might be degraded by a direct discharge. The discharge structure would therefore discharge into the overflow, spreader swale, or other channel, which in turn would release the water to the actual receiving water. Such receiving waters might include marshes, wetland, salt marshes and land naturally receiving overland sheet flow.

b. Dry retention/detention areas (not applicable to natural or mitigation wetland areas).

1. Dry retention/detention areas shall allow for the return of the groundwater level in the area to the control elevation.
2. On-site mosquito control ditches or other appropriate features for such purpose shall be incorporated into the design of dry retention/detention areas.
3. The design of dry retention/detention areas shall incorporate considerations for regular maintenance and vegetation harvesting procedures.

c. Wet retention/detention areas.

1. Dimensional criteria (as measured at or from the control elevation).

i. Depth. A minimum of 20 percent of the area shallower than six feet is required.

ii. Side slopes for purposes of public safety, water quality enhancement and maintenance. All wet retention/detention areas shall have side slopes no steeper than 4:1 (horizontal/vertical) out to a depth of two feet below the control elevation, or an equivalent substitute. Side slopes shall be topsoiled, nurtured or planted from two feet below to one foot above control elevation to promote vegetation growth. Littoral zone vegetation growth survival shall be a condition for operation permit issuance.

2. Support facility design criteria. Perimeter maintenance and operation easements of ten feet (minimum preferable) width at slopes no steeper than 4:1 (horizontal/vertical) should be provided beyond the control elevation water line. Control elevations must be set so as not to cause flooding in roadways and to protect road subgrades.

d. Impervious areas. Runoff shall be discharged from impervious surfaces through retention areas, detention devices, filtering and cleansing devices, and/or subjected to some type of best management practice (BMP) prior to discharge from the project site. For projects that include substantial paved areas, such as shopping centers, large highway intersections with frequently stopped traffic, and high-density developments, provisions shall be made for the removal of oil, grease, and sediment from stormwater prior to discharge into the receiving waters of a watercourse.

e. Stagnant water conditions. Configurations that create stagnant water conditions shall not be allowed.

(g) Stormwater management plans. It is the responsibility of the applicant to include in the stormwater management plan for the development sufficient information for the Planning Director to evaluate the environmental and stormwater discharge characteristics of the affected areas, the potential and predicted impacts of the proposed activity on community waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, calculations, explanations, and citations to supporting references, and any additional information deemed necessary by the Planning Director. The stormwater management plan must be sealed by an engineer registered in the state with experience in stormwater management and drainage design.

(h) Manual and brochure of stormwater management practices.

(1) The Planning and Environmental Resources Department staff shall compile a manual of stormwater management practices for the guidance of persons preparing stormwater management plans and designing or operating stormwater management systems. The manual and brochure shall be the primary implementation tool and shall be updated periodically to reflect the most current and effective practices. This manual shall be made available to the public.

(2) The manual shall include guidance and specifications for the preparation of stormwater management plans. Acceptable techniques for obtaining, calculating, and presenting the information required in the stormwater management plans shall be described.

(3) The manual and brochure shall include guidance for acceptable best management practices (BMP's) for stormwater management systems for single-family and duplex residences. It shall address the condition that improvements to the land may result in water improvement, thereby creating surface water over land that would otherwise not be wetland.

(4) The manual and brochure shall include guidance in the selection of environmentally sound practices for the management of stormwater and the control of erosion and sedimentation. The development and use of techniques that emphasize the use of natural systems shall be encouraged.

(5) The manual shall also establish minimum specifications for the construction of stormwater management facilities. Construction specification shall be established in accordance with sound engineering practices.

(6) The Planning and Environmental Resources Department shall submit the manual and subsequent revisions of it to the BOCC for review and approval. The manual may also be submitted for review to the Florida Department of Environmental Protection's Nonpoint Source Management Section in Tallahassee, Florida, and the South Florida Water Management District.

(7) Adherence to these regulations shall be based on t he guidelines outlined in the manual.

(i) Administration.

(1) Permit application procedures. The stormwater management plan shall be submitted as part of an application for development approval outlined in this Code, unless otherwise herein exempted. All conditions, approvals, and fees shall apply.

(2) Plan adherence. The applicant shall be required to adhere to the plans as approved and permitted. Any changes or amendments to the individual stormwater management plan must be approved by the Planning and Environmental Resources Department prior to construction.

(3) If required, a permit from the South Florida Water Management District must be obtained prior to final concurrency determination.

(j) Maintenance and inspection.

(1) The installed systems required by these regulations shall be maintained by the owner or approved operating entity, except that the county may select certain systems for county maintenance. The selection of critical areas and/or structures to be maintained by the county shall be recommended to the BOCC by the Planning Director and the County Engineer. All areas and/or structures to be maintained by the county must be dedicated to the county by plat or separate instrument and accepted by the BOCC. The systems to be maintained by the owner or approved operating entity shall have adequate access and easements to permit the county right of entry to inspect and, if necessary, to take corrective action should the owner fail to maintain the systems to be maintained by him. The Planning Director shall give such owner written notice of the nature of corrective action necessary. Should the owner fail, within 30 days from the date of the notice, to take corrective action, the BOCC may take the necessary corrective action and place a lien on the property of the owner to recover the costs thereof.

(2) The applicant shall arrange with the Planning Director for scheduling the following inspections (these inspections may be scheduled along with other required inspections):

a. Erosion and sediment control inspection. As necessary during and after construction to ensure effective control of erosion and sedimentation. Control measures shall be installed and stabilized between any waters and any areas cleared prior to land clearing.
b. Bury inspections. Prior to the burial of any underground drainage structure.
c. Final inspection. When all work, including installation of all stormwater management system facilities, has been completed.

The Code Compliance Officer who inspects the work shall either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved permit. Any portion of the work that does not comply shall be corrected by the permittee within a time frame deemed reasonable by the Planning Director depending on the time needed to correct the violation and the effect of the violation on water and habitat quality, or the applicant shall be subject to the penalty provisions of subsection (k) of this section. There shall be a fee for inspections as established by the BOCC, and no certificates of occupancy shall be issued without approval of the Planning Director.

(k) Enforcement and penalties.

(1) Enforcement. If the Planning Director determines that the project is not being carried out in accordance with the approved plan or if any project subject to these regulations is being carried out without a permit he is authorized to:

a. Issue written notice to the applicant that specifies the nature and location of the alleged noncompliance and includes a description of the remedial actions necessary to bring the project into compliance; and

b. Direct the Building Official to issue stop-work orders directing the applicant or persons in possession to cease and desist all or any portion of the work that violates the provisions of these regulations until the remedial work is completed. The applicant shall then bring the project into compliance or be subject to denial of certificate of occupancy for the project.

Any order issued pursuant to this subsection not adequately addressed within ten working days shall be forwarded to the Code Compliance Department. With the exception of single-family and duplex residences, the Planning Director shall require a sealed, as-built topographic survey detailing the completed stormwater management system of the development.

(2) Penalties. Penalties will be assessed pursuant to F.S. Chapter 163.

(l) Appeals. Any person aggrieved by the action of any official charged with the enforcement of these regulations as the result of the disapproval of a properly filed permit application, issuance of a written notice of violation, or an alleged failure to properly enforce these regulations in regard to a specific application, shall have the right to appeal the action to the Planning Commission pursuant to Section 102-185.

Sec. 114-4. Wastewater Treatment Criteria.

No structure or land shall be developed, used or occupied unless served by wastewater treatment facilities that meet the following criteria:

(a) On-site treatment facilities.

(1) All on-site wastewater treatment facilities shall comply with the minimum requirements of F.A.C. Chapter 64E-6.

(2) Notwithstanding the minimum setback from surface water bodies established by F.A.C. Chapter 64E-6, on-site wastewater treatment facilities shall be located such that the discharge point of such facilities is located as far as possible away from any surface body of water without violating the other minimum setback requirements established by F.A.C. Chapter 64E-6.

(3) All on-site wastewater treatment facilities shall be inspected by a licensed contractor or engineer every three years, and a s worn affidavit that the on-site wastewater treatment capacity is operating at or above design capacity signed by the inspecting contractor or engineer shall be filed with the Planning Department within 30 days of such inspection.

(b) Sewage disposal facilities.

(1) All sewage disposal facilities shall comply with the minimum requirements of F.A.C. Chapter 64E-6.

(2) Sewage disposal facilities shall be designed and located so that in the event of power failure, untreated effluent will not be discharged into any surface body of water or any wetland.

(3) Sewage disposal facilities shall be located such that any discharge point, whether by shallow or deep well, is located as far as possible from any surface body of water without violating any other setback requirement established by F.A.C. Chapter 64E-6.

Sec. 114-6. Curbs and Gutters.

Permanent six-inch concrete curbs with 24-inch integral concrete gutters or standard rolled curb and gutters shall be provided or such other construction as may be approved by the County Engineer.

Sec. 114-7. Sidewalks and Shared Use Paths.

(a) If concrete sidewalks are provided, they shall be at least four inches thick and reinforced with a six-inch by six-inch wire mesh on a mechanically compacted base.

(b) If sidewalks or shared use paths are provided, the minimum width shall be as follows:

(1) For sidewalks: five (5) feet; and
(2) For shared use paths: minimum of eight (8) feet; ten (10) feet preferred.

Sec. 114-8. Installation of Utilities and Driveways.

(a) The County encourages utility services to be installed underground when feasible, including electric power, telephone and community antenna television service. Both main transmission lines and individual service connection lines to buildings may be installed underground, when feasible.

(b) All driveways for nonresidential or multi-family development shall be composed of compacted fill or concrete not less than four inches thick on a mechanically compacted base and reinforced with at least six-inch by six-inch number wire mesh, or such other construction, including permeable paving materials, as may be approved by the County Engineer.

(c) If a driveway is installed to serve two or more lots, an agreement between the lot owners must be approved by the County Engineer to ensure the maintenance of the driveway.

(d) All underground utility mains and service connections shall be completely installed, inspected and approved by the Public Works Department or the County Engineer before grading is commenced and after grading is completed and before any road base is applied.

Sec. 114-9. Water Supply and Sanitary Sewer Service.

(a) Septic tanks and drain fields shall be permitted only when approved by the County Health Department and the Florida Department of Health.
(b) Proposed waterlines shall be coordinated with the Florida Keys Aqueduct Authority (FKAA) and shall meet all conditions and requirements of the FKAA water main extension policy.
(c) Individual wells shall only be permitted where there is no public supply of water feasible.

Sec. 114-10. Road and Private Drive Name Signs.

The developer, at his expense, shall install road name signs, if applicable, at each entrance to the development and at each intersection of public roads within the development, of durable and sound construction in accordance with Standard Specifications and Details of Monroe County.

Sec. 114-11. Traffic-Control Signs and Devices.

The developer, at his expense, shall install traffic-control signs at locations determined by the County Engineer. Such signs shall meet the requirements of the most current edition of the Manual on Uniform Traffic Control Devices (MUTCD).

Sec. 114-12. Live-Aboard Vessels.

Live-aboard vessels shall be hooked up to an on-land sewage disposal system or shall be provided with onshore sanitary facilities. New live-aboard vessel slips shall only be permitted in marinas that have adequate off-street parking, pump-out facilities and amenities for the occupants of the live-aboard vessels.

Sec. 114-13. Fences.

It is the purpose of this section to regulate fences in order to protect the public health, safety and welfare.

(a) Height. In general, all fences shall be measured from the highest finished elevation adjacent to the fence and shall not exceed six feet in height.

    (1) For any parcel of land with access to U.S. 1, any property with access to an arterial road and/or any property developed with a nonresidential use , a fence shall not exceed three (3) feet in height within a clear sight triangle as defined in Section 114-201;

(2) For any parcel of land located along US 1 or adjacent to the intersection of any two public roads, a fence shall not exceed three (3) feet in height within a clear sight triangle as defined in section 114-201 and/or according to FDOT and national American Association of State Highway and Transportation Officials (AASHTO) standards, whichever is more restrictive;

(3) For any parcel of land developed with a single-family residential residence and on a local road, a fence located within a clear sight triangle as defined in Section 114-201 may exceed three (3) feet in height if located a minimum of ten (10) feet from the edge of pavement of the road, the sidewalk or the bike path, whichever is closest to the property line. On unpaved streets, the distance shall be measured from the approximate edge of the cleared right-of-way;

(4) A fence shall not exceed four (4) feet in height within any front yard setback or within any side yard setback that overlaps with a front yard setback, as required pursuant to Chapter 131, except as follows:

a. Within all land use (zoning) districts, fences of up to five (5) feet in height may be permitted if constructed of chain-link or another material that does not impair visibility. Construction details and materials for fences, other than chain-link, must be approved by the Planning Director;

b. Within the Airport (AD), Commercial 1 (C1), Commercial 2 (C2), Commercial Fishing Area (CFA), Commercial Fishing Special District (CFSD), Commercial fishing Village (CFV), Destination Resort (DR), Industrial (I), Maritime Industries (MI), Mixed Use (MU), Recreational Vehicle (RV), Suburban Commercial (SC) and Urban Commercial (UC) Land Use (Zoning) Districts, fences of up to six (6) feet in height may be permitted, provided the fences are not located within clear sight triangles as defined in Section 114-201 and/or according to FDOT and national AASHTO standards, whichever is more restrictive;

c. Within the Improved Subdivision (IS), Native Area (NA), Sparsely Settled (SS), Suburban Residential (SR) and Suburban Residential Limited (SR-L) Land Use (Zoning) Districts, fences of up to six (6) feet in height may be permitted, provided that no other residentially developed property is located within 200 feet of the subject property and provided the fences are not located within clear sight triangles as defined in Section 114-201 and/or according to FDOT and national AASHTO standards, whichever is more restrictive;

d. Notwithstanding the provisions of (a)(4) and (a)(4)c. of this section, on Stock Island and on Key Haven, fences of up to six (6) feet may be permitted, provided they are not located within clear sight triangles as defined in section 114-201 and/or according to FDOT and national AASHTO standards, whichever is more restrictive. In addition, parcels of land on Stock Island and Key Haven that are developed with single family dwellings may incorporate entry features of greater than six (6) feet within fences, provided all of the following design criteria are met:

1. The entry feature is defined as a continuous fence or gate, or combination thereof, located contiguous to and on both sides of the main access (driveway) to the property which is designed and intended to control and/or demarcate the access to the property. An "entry feature" includes all walls, buttresses, guy wires, integral signs and decorative features attached thereto up to a maximum width of 12 feet, or 15 percent of the lot width whichever is greater, a maximum height of ten (10) feet, and four (4) feet in depth or six (6) percent of the lot depth whichever is greater as measured from the front property line; and
2. The entry feature shall not be located in any side yard setback required pursuant to Section 131-1; and
3. The entry feature shall be compatible with the existing development in the immediate vicinity, shall be in harmony with the general appearance and character of the community, and shall not be otherwise detrimental to the public welfare; and
4. The entry feature shall be designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent structures while affording the applicant a reasonable use of the land; and
5. The entry feature shall require a building permit for its construction and in addition to the normal building permit application requirements, the application shall include a scaled site plan and elevations for the entry feature that shows the height, width and length of each element of the entry feature applied for, including any decorative or non-functional elements; and identification of the materials composing each element of the structure (e.g. wire, stone, chain-link, wood, etc.).

(5) When it is necessary to use a fence to contain athletic activity, the fence may be erected to a maximum of twelve (12) feet in height, if constructed of chain-link or another material that does not impair visibility. Construction details and materials for fences other than chain-link must be approved by the Planning Director;

(6) When it is necessary to use a fence to contain a public use for safety and/or security purposes (i.e. high voltage substations, pumping stations, public wastewater treatment facilities), the fence may be erected to a maximum height provided in national, state or otherwise recognized industry code, if it is designed in accordance with community character as determined by the Planning Director.

(b) Setbacks. In general, notwithstanding the setback requirements in Section 131-1, fencing may be located anywhere on the property, including the property line, except as follows:

(1) The use of a fence shall not negate bufferyard requirements and standards. The clearing of existing native vegetation to locate a fence in the bufferyard shall only be permitted to facilitate the construction of fences located along the inside or outside edge of the required bufferyard.

(2) No fence shall be placed so as to extend into or through any wetlands or water bodies, or extend beyond the mean high tide line on any property.
(3) In no event shall fences be approved if they restrict fire and emergency access to individual or adjacent properties.
(4) Additional setback requirements for Big Pine Key and No Name Key are provided in subsection (c) of this section.

(c) Additional requirements for Big Pine Key and No Name Key as required by LCP, HCP and ITP for Big Pine Key and No Name Key. The purpose of this subsection is to recognize and provide for the particular habitat needs of the Florida Key Deer (Odocoileus virginianus clavium) on Big Pine Key and No Name Key so that deer movement throughout Big Pine Key and No Name Key is not hindered while allowing for reasonable use of minimal fencing for the purposes of safety and protection of property. In addition to all other standards set forth in this section, all fences located on Big Pine Key and No Name Key shall meet the standards of this subsection as listed below:

(1) In the Improved Subdivision (IS) Land Use (Zoning) District, fences shall be set back as follows:

a. On canal lots, fences shall be set back at least 15 feet from the edge of abutting street rights-of-way; and built to the edge of all other property lines or as approved through a U.S. Fish and Wildlife Service coordination letter; and
b. On all other lots, fences shall be set back at least 15 feet from the edge of abutting street rights-of-way, at least five feet from side property lines and at least ten feet from the rear property line, or as approved through a U.S. Fish and Wildlife Service coordination letter.

(2) In land use (zoning) districts other than Improved Subdivision (IS), fences may enclose up to a maximum of and not to exceed the net buildable area of the parcel only.
(3) Enclosure of the freshwater wetlands by fences is prohibited.
(4) All fences shall be designed and located such that Key Deer access to native habitat, including pinelands, hammocks, beach berms, salt marshes, buttonwoods and mangroves is maintained wherever possible.
(5) All fences shall be designed and located such that Key Deer corridors, as identified by the U.S. Fish and Wildlife Service, shall be maintained.
(6) Fences shall not be permitted without a principal use except where the enclosed area consists of disturbed lands or disturbed land with exotics.

(d) Use. Fences may be allowed as accessory uses/structures within any Land Use (Zoning) District. Notwithstanding the definition of accessory use in Section 101-1, fences may be allowed without a principal use where upland security is required.

(e) Construction material. Fences may be constructed of natural or manmade materials, including, but not limited to, brick, lumber, stone, metal, plaster, concrete and masonry,

except for barbed wire and razor wire, which are prohibited except in the Industrial (I) and Airport (AD) Land Use (Zoning) Districts.

(f) Attachments to fences. No attachments to fences shall be allowed. The only exception shall be a maximum of two electrical lights attached to the fence. Such lights shall not exceed two feet in height above the maximum height limit of the fence. These lights shall comply with all outdoor lighting requirements of Article VI of this chapter.

(g) Required permit. All fences shall be constructed pursuant to a building permit issued by the county building department and, if applicable, according to the requirements of the HCP/ITP.

(h) Limited clearing. To allow construction of fences and gates, limited clearing may be permitted if the following design standards have been met:

(1) Such limited clearing does not occur in scenic highway corridors as defined and required in this Land Development Code;
(2) Limited clearing shall not remove native vegetation that would provide for the minimum buffer required in Section 114-124; and
(3) Existing tree canopies within hardwood and pineland hammocks are not removed.

(i) Maintenance. All fences shall be maintained in good repair at all times.

Sec. 114-14. Recycling and Solid Waste Collection Areas.

Any nonresidential, mixed use or multi-family residential development shall make adequate provision for a recycling collection area in accordance with the following standards:

(a) Nonresidential and mixed use buildings:

The following are minimum space configurations per solid waste/recycling collection area:

Floor Area (square feet)	Minimum Collection Area (square feet)
0 to 5,000	82
5,001 to 15,000	125
15,001 to 50,000	175
50,001 to 100,000	225
100,001 or greater	275

(b) Multi-family residential developments:

The following are minimum space configurations per solid waste/recycling collection area:

Dwelling Units	Minimum Collection Area (square feet)
3 to 10	144
11 to 15	216
16 to 30	240
31 to 35	264

For multi-family residential developments consisting of 36 to 50 dwelling units, there shall be at least two collection areas, with each area consisting of at least 240 square feet.

For multi-family residential developments consisting of more than 50 dwelling units, there shall at least one collection area per 25 dwelling units, with each area consisting of at least 240 square feet.

Combinations of collection areas that, in total, meet the standards are acceptable if approved by the Planning Director.

(c) Additional solid waste containers. Generally, the minimum collection areas shown above provide enough area for a typical solid waste container (i.e. dumpster) and recycling containers.

If the collection area requires more than one solid waste container, then an additional area of six feet by ten feet (60 square feet) is required per each additional solid waste container.

(d) Setback. Notwithstanding the provisions of Chapter 131, a collection area may be set back five feet from any rear or side yard property line.

(e) Screening. Notwithstanding the provisions of Sections 114-13 and 131-1, collection areas shall be screened on at least three sides. Screening shall consist of a solid or semi-opaque enclosure that shall not exceed six feet in height. The enclosure shall provide a minimum of one foot six inch clearance on each side of the container.

(f) Enclosure design. Area required is measured from the interior dimensions of the enclosure. Enough room should be provided to move and lift containers. The design of the enclosure should make it easy to keep container lids shut at all times.

(g) Location. Exterior collection areas should be located in an area accessible and convenient to the intended users (typically no more than 200 feet from the farthest user). The location of the collection area should not interfere with the primary use of the site. It should be located in areas that can tolerate noise, odor and increased pedestrian and vehicle traffic. The collection area should be designed to be easily accessible by all collection vehicles.

Sec. 114-15. Accommodation for Mass Transit.

Nonresidential and multi-family uses generating over two thousand (2,000) trips per day shall be developed to encourage mass transit, by including features such as: transit facilities, including covered bus shelters, pedestrian/bicycle paths, bicycle racks, carpool facilities, adequate turning radii for large vehicles, and pedestrian access to adjacent nonresidential and multi-family uses.

Sec. 114-16. Planned Bicycle or Pedestrian Facility Requirement.

Development occurring on or adjacent to the location of a planned bicycle or pedestrian facility as identified by the County shall provide for the construction of that portion of the facility occurring within or adjacent to the development. If the facility already has been built, or if it will be constructed by an external agency, the development shall be connected to the facility in a safe and convenient manner to ensure that it is part of the development's overall transportation system. For state owned bicycle or pedestrian facilities a connection permit shall be required.

Secs. 114-17—114-43. Reserved.

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ARTICLE II. ENERGY AND WATER CONSERVATION STANDARDS

Sec. 114-44. Purpose.

It is the purpose of this article to provide for the conservation of energy and water in design and development in the county.

Sec. 114-45. Energy Conservation Standards.

All developments shall make adequate provision for energy conservation. To the greatest extent practical, developments shall incorporate the following standards into site and building design:

(a) Provision of bicycle/pedestrian paths and sidewalks along roads;

(b) Provision of bicycle racks or other bicycle storage facilities in nonresidential and multi-family developments;

(c) Reduced coverage by asphalt, concrete, rock and similar substances in streets, driveways, parking lots and other areas to reduce local air temperatures and reflected light and heat;

(d) Installation of energy-efficient lighting for streets, parking areas, recreation areas, and other interior and exterior public areas;

(e) Selection, installation and maintenance of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, maintenance and other needs;

(f) Planting of native shade trees to provide reasonable shade for all recreation areas, streets and parking areas;

(g) Orientation of structures, as possible, to reduce solar heat gain by walls and to use the natural cooling effects of the wind;

(h) Provision for structural shading (e.g., trellises, awnings and roof overhangs) wherever practicable when natural shading cannot be used effectively; and

(i) Inclusion of porch/patio areas in residential units.

Sec. 114-46. Potable water conservation standards.

All development shall make adequate provision for water conservation. To the greatest extent practical, developments shall incorporate the following standards into site and building design:

(1) Planting of native vegetation to reduce need for use of potable water for landscape watering; and

(2) Installation of alternative water source systems such as reverse osmosis, cisterns, water re-use and on-site stormwater collection for irrigation and other safe uses.

Secs. 114-47—114-65. Reserved.

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ARTICLE III. PARKING AND LOADING

Sec. 114-66. Purpose and Intent.

The purpose and intent of this article is to provide adequate off-street parking and loading areas to serve the majority of traffic generated by development. The provision of parking and loading areas is to:

(1) Avoid undue congestion on the roads;

(2) Protect the capacity of the road system to move traffic;

(3) Minimize unnecessary conflicts among vehicles, pedestrians, and bicyclists;

(4) Facilitate the use of transportation management systems; and

(5) Avoid noise, glare, lights, and visual impacts of parking and loading operations on adjacent properties.

Sec. 114-67. Required Off-Street Parking.

(a) *Generally.* Every use shall be provided with off-street parking in accordance with the standards contained in this article. Every parking space, both required and unrequired, shall meet the minimum standards of this article.

(b) *Design and dimensional requirements of parking spaces and aisles.*

Except as expressly stated herein, each parking aisle and parking space shall meet the following minimum standards:

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Parking Space and Aisle Width Minimum Dimensional Requirements

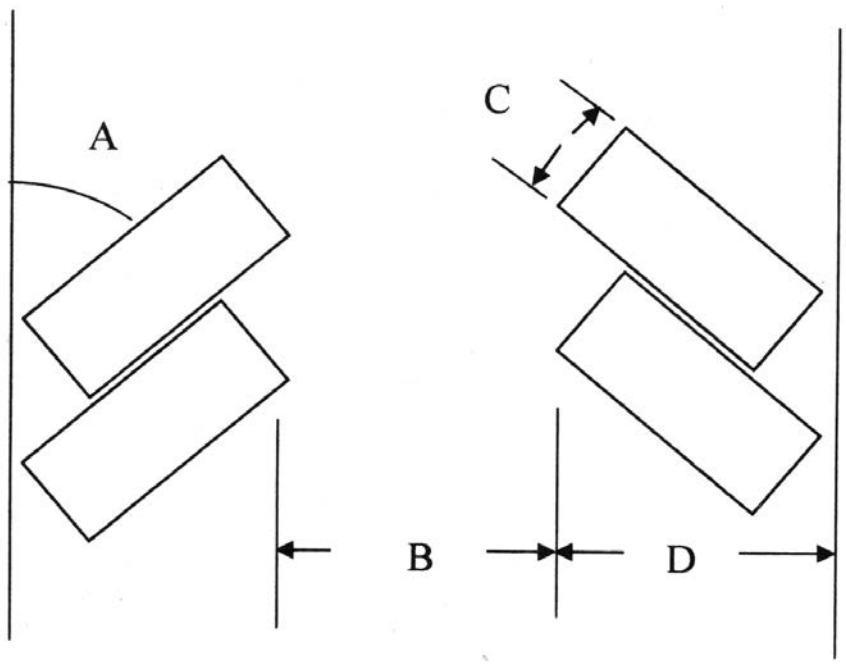

Illustration of Minimum Required Parking Space Dimensions

Legend for Minimum Required Parking Space Dimensions
A—Angle of parking space, varies from 0 to 90 degrees
B—Width of aisle, one-way and two-way
C—Width of parking space
D—Length of parking space

Parking Pattern in Degrees (A)	*One-Way* Aisle Width *in feet (B)*	*Two-Way* Aisle Width *in feet (B)*	Parking Space Width *in feet (C)*	Parking Space Length *in feet (D)*
0 (parallel)	12	24	8.5*	25
30 or 45	15	24	8.5*	18
60	18	24	8.5*	18
75	22	24	8.5*	18
90	24	24	8.5*	18

*All ADA parking spaces must have a width (C) of 12 feet, plus a 5-foot access aisle, based on Americans with Disabilities Act Accessibility Guidelines

(c) *Required number of off-street parking spaces.*

The following number of parking spaces shall be provided for each use:

Specific Use Category	Minimum Required Number of Parking Spaces Per Indicated Unit of Measure
Single-family dwelling units, including mobile homes on individual lots or parcels	2.0 spaces per dwelling unit or mobile home
Multifamily residential developments	2.0 spaces per each 1-bedroom dwelling unit; 2.0 spaces per each 2-bedroom dwelling unit; and 3.0 spaces per each 3 or more bedroom dwelling unit
Mobile home parks	2.0 spaces per each mobile home
Commercial retail except as otherwise specified in this table	3.0 spaces per 1,000 sq. ft. of nonresidential floor area within the building and 1.5 spaces per 1,000 sq. ft. of area devoted to outdoor retail sales
Eating and drinking establishments, such as restaurants and bars	For areas devoted to food/beverage service, 1.0 space per 3 seats or 3.0 spaces per 1,000 sq. ft. of nonresidential floor area, whichever total amount is higher. For other areas, 3.0 spaces per 1,000 sq. ft. of nonresidential floor area within the building separate from the seating area and devoted to activities other than food/beverage service (including, but not limited to, kitchen, office, retail sales not related to food or beverage and storage).
Convenience stores/markets	4.0 spaces per 1,000 sq. ft. of nonresidential floor area within the building
Gasoline/service stations	4.0 spaces per 1,000 sq. ft. of nonresidential floor area within the building and 1.0 space per each fueling station (such space may also serve as the space for the vehicle in which a fuel pump serves)
Commercial recreation (indoor), excluding theaters, conference centers and activity centers	5.0 spaces per 1,000 sq. ft. of nonresidential floor area within building
Commercial recreation (outdoor)	5.0 spaces per 1,000 sq. ft. of the parcel that is directly devoted to the outdoor recreational activity, excluding areas used for parking and driveways, required yards and required landscaping and buffer areas
Theaters, conference centers, or activity centers	1.0 space per 3.0 actual seats or based on seating capacity

Specific Use Category	Minimum Required Number of Parking Spaces Per Indicated Unit of Measure
Offices	3.0 spaces per 1,000 sq. ft. of nonresidential floor area within the building
Medical and dental clinics	4.0 spaces per 1,000 sq. ft. of nonresidential floor area within the building
RV parks	1.0 space per each RV space
Hotels/destination resorts	1.0 space per each 1-bedroom transient dwelling unit and 1.0 space plus 0.5 space for each additional bedroom per each 2 or more bedroom transient dwelling unit
Industrial uses; excluding mini-warehouses/self-storage centers; repair and or servicing of vehicles; and warehousing	2.0 spaces per 1,000 sq. ft. of nonresidential floor area within building; and 1.0 space per 1,000 sq. ft. of the parcel that is devoted to outdoor industrial use
Mini-warehouses/self-storage center	3.0 spaces for the office use plus a parking aisle of 10 feet in width adjacent the storage unit access doors if outside access to the storage units is provided
Repair and or servicing of vehicles	3.0 spaces per service/repair bay or 3.0 spaces per 1000 sq. ft. of nonresidential floor area within building, whichever is greater, the service/repair bays shall not be counted as parking spaces
Warehousing	1.0 space per 1,000 sq. ft. nonresidential floor area within the building
Hospitals	1.8 spaces per bed
Churches	0.3 space per seat and/or 0.3 space per 24 inches for pews
Live-aboard	1.5 spaces per berth
Marinas and commercial fishing facilities	1.0 space per berth plus 1.0 space per four dry storage racks
Charter/guide boats, six or fewer passengers capacity	2.0 spaces per berth
Party and charter/guide boats, more than six passengers capacity	0.3 space per passenger capacity of vessel
Boat ramps	6.0 spaces per ramp; all spaces shall be a minimum of 14 feet by 55 feet, to accommodate trailers and oversized vehicles

(d) *Category of specific use for determination of the number of spaces.* If a use does not fall within one of the specific use categories in subsection (c) of this section, or the general category does not accurately identify the parking need for a specific use, then the parking

space requirements shall be based on the most current edition of the Institute of Transportation Engineer's Parking Generation Manual.

(e) *Calculation of number of parking spaces.* In calculating the number of parking spaces required under this article, the following special provisions apply:

(1) When units or measurements determining the number of required parking spaces result in the requirement of a fractional space, any fraction less than one-half (0.5) shall be disregarded and fractions of one-half (0.5) or greater shall require one (1) parking space.

(2) When two or more separate uses are on a site, the required parking for the site is the sum of the total required parking for each of the individual uses, except if the shared parking calculation option is used, as provided for in subsection (i) of this section.

(3) Within a gated master planned community, up to 25 percent of the required parking spaces for nonresidential uses may be replaced with an equivalent number of smaller parking spaces designed to accommodate golf carts, neighborhood electric vehicles, similar four wheeled vehicles, motorcycles, or scooters.

(4) On Stock Island, consistent with its community master plan, up to 20 percent of the required parking spaces for nonresidential uses may be replaced with an equivalent number of smaller parking spaces designed to accommodate motorcycles or scooters and other similar modes of transportation.

(f) *Additional parking requirements.*

(1) The number and design of ADA parking spaces shall be in accordance with the provisions of Chapter 6, which incorporates by reference the Florida Building Code.

(2) Scooter and motorcycle parking spaces shall be a minimum width of 3.5’ by 7.5’ in length. Golf cart parking spaces shall be a minimum of 6’ in width by 11’ in length.

(g) *Location of required parking.* Required off-street parking spaces for residential uses shall be located on the same parcel of land as the dwelling unit(s) which the parking spaces serve. Required off-street parking spaces for nonresidential uses shall be located on the same parcel of land as the nonresidential use which the parking spaces serve or at an off-site parking facility in accordance the provisions of subsection (h) of this section.

(h) *Requirements for off-site parking facilities*. The following requirements shall apply to off-site parking facilities for nonresidential uses.

(1) The location of any off-site parking facility shall be within 300 feet walking distance, as measured by the shortest route of effective pedestrian access to a public entrance to the structure or land area containing the use for which the spaces are required.

(2) A parking agreement shall be required in accordance with Section 114-68.

(3) In addition, any off-site parking facility located within a different land use (zoning) district than the principal use it is intended to serve or any off-site parking facility proposed to be located greater than 300 feet walking distance from the principal use it is intended to serve shall meet the following provisions:

a. The off-site parking facility shall be approved by a minor conditional use permit, meeting all of the standards set forth in Section 110-67. If the principal use requires a major conditional use approval, the off-site parking facility may also be reviewed pursuant to the major conditional use application.

b. The location of any off-site parking facility shall be governed by the following:

1. The proposed off-site parking facility shall not be located greater than 600 feet walking distance, as measured by the shortest route of effective pedestrian access to a public entrance to the structure or land area containing the use for which the spaces are required; and
2. The proposed off-site parking facility shall not require vehicles to drive past existing residential uses; and
3. Pedestrians shall not be required to cross U.S. 1 to reach the use served by the off-site parking.
4. The proposed off-site parking facility shall not be located on Tier I designated property.

c. No parking space or vehicle overhang shall encroach upon t he required landscaping, any sidewalk area, or the right-of-way of any public road or walkway.

d. A class "C" bufferyard shall be provided on any side of the parcel which is contiguous to an established residential use.

(i) *Shared parking option requirements.*

(1) Purpose. The purpose of the shared parking option is to permit a reduction in the total number of parking spaces, which would otherwise be required in instances where two or more uses on the same development parcel are to share the same parking spaces because their peak parking demands do not occur at the same time. Shared parking is an option to the method for calculation of required parking as provided for in subsection (e)(2) of this section.

(2) Condition on development approval. If the shared parking option is used to calculate the amount of required parking spaces, the approved development permit shall have a condition that any change in the occupancy or use of any of the principal uses intended to be served by the shared parking shall require development approval by the Planning Director to ensure sufficient parking is available.

(3) Computation of shared parking requirements. Notwithstanding the provisions of subsection (e)(3) of this section for individual land uses, when any land or building is used for two or more distinguishable purposes as listed in this subsection, the shared parking option may be used to determine the minimum amount of parking required. Under the shared parking option, the minimum total number of required parking spaces for the land or building shall be determined by the following procedure:

a. Multiply the minimum parking requirement for each individual use as set forth in subsection (i)(3)c. of this section by the appropriate percentage as set forth in the table below for each of the five designated time periods.
b. Add the resulting sums for each of the five vertical columns in the table.
c. The minimum parking requirement is the highest sum among the five columns resulting from the calculation in subsection (i)(3)b. of this section. Time periods not covered in the table below may be ignored for the purposes of calculating shared parking.

	Nighttime	*Weekday*		*Weekend*	
	Midnight to 6:00 a.m.	*Day* (9:00 a.m. to *4:00 p.m.)*	*Evening (6:00 p.m. to Midnight)*	*Day* (9:00 a.m. to *4:00 p.m.)*	*Evening (6:00 p.m. to Midnight)*
Specific Use Categories					
Marinas	5%	70%	10%	100%	20%
Residential	100%	60%	90%	80%	90%
Office/industrial	5%	100%	10%	10%	5%
Churches	5%	25%	50%	100%	50%
Commercial retail	5%	60%	90%	100%	70%
Drinking and eating/entertainment/recreation (theaters, bowling alleys, meeting halls)	10%	40%	100%	80%	100%
Hotel	75%	75%	100%	75%	100%
All others	100%	100%	100%	100%	100%

d. Shared parking spaces shall not be separated by any physical barrier(s) from the uses they are intended to serve, and shall not be assigned or reserved for specific businesses or individuals.

(4) Parking demand study. The Planning Director may reduce the required parking requirements based on a parking demand study approved by the Planning Director.

The methodology for conducting the study shall be submitted for review and approval by the county and shall include, but not be limited to, the week and day the study will be conducted, the number of days and duration of the study, and the time intervals and locations for data collection. The study shall be reviewed by the county traffic consultant to determine whether the parking study supports the basis for the parking reduction request.

(j) *Wheel stop requirements.* All impervious surface parking spaces shall be clearly marked by striping or other markings acceptable to the Planning Director. All pervious and impervious surface parking spaces shall have a wheel stop, bumper blocks or similar barriers where the front of the parking space is adjacent a building, required yard or required landscaping, to designate each parking space.

(k) *Nonconforming parking and loading.* All lawfully existing multifamily (3 or more units) residential or nonresidential development that is nonconforming to the parking and/or loading requirements of this article shall be brought into compliance as follows:

(1) When any change of use or expansion of the use occurs, the site shall come into compliance with the parking and loading requirements of this article to the greatest extent practicable (considering sufficient land is available on the site to accommodate some or all of the parking deficiencies), as determined by the Planning Director on a case-by-case basis.
(2) When any substantial improvement occurs, the property shall come into full compliance with the parking and loading requirements of this article.

Sec. 114-68. Parking Agreements.

(a) Purpose. The purpose of parking agreements is to ensure the continued availability of off-site parking facilities for the uses they are intended to serve.

(b) Requirements. All off-site parking facilities shall require a parking agreement.

(c) Form and approvals. The parking agreement shall be drawn to the satisfaction of the county attorney and Planning Director and executed by all parties, including the county. The agreement shall provide the county with the right of enforcement.

(d) The owner or lessee of the land upon which such required off-site parking facilities are located shall enter into a written agreement with the county, to be filed with the Clerk of the Circuit Court, with enforcement running to the county, providing that the land comprising the required off-site parking facilities shall not be encroached upon, used, sold, leased or conveyed for any purpose except in conjunction with the nonresidential building or use which the required off-site parking serves, so long as the parking facilities are needed.

Sec. 114-69. Required Number and Size of Loading/Unloading Spaces.

All nonresidential uses of over 100 s quare feet in floor area, involving the receipt and distribution by vehicles of materials and merchandise, shall provide for off-street loading.

(a) Number and size of required spaces. Loading/unloading spaces shall be provided as follows:

		Minimum Required Number of Loading and Unloading Spaces	
Specific use category	GFA (sq. ft.)	11′× 35′	11′ × 55′
All nonresidential uses	1002,499	1	0
	2,50019,999	0	1
	20,00049,000	0	1
	50,000 and over	0	2
Outdoor uses and storage	All sizes	1	0

(b) Location of required loading/unloading spaces. Loading/unloading spaces shall be located entirely on the same parcel as the principal use they serve. These spaces shall not be located on a ny public right-of-way, or on any parking spaces or parking aisle, and shall allow for adequate ingress and egress and turning maneuverability within the site. The spaces shall be accessible and adjacent or as close to the building served as possible.

(c) Reduction in loading/unloading space requirements. The Planning Director is authorized to grant a reduction in the number and dimensional requirements for loading/unloading spaces based on t he submittal by an applicant of a study of loading/unloading space need, prepared and signed by a q ualified traffic engineer, and reviewed by the county traffic planner/consultant.

Sec. 114-70. Restriction on Use of Parking and Loading Spaces.

The use of off-street parking, loading/unloading spaces or aisles for outdoor retail sales, outside storage, storage area, or repair of motor vehicles or any kind of equipment is prohibited except as allowed through the issuance of a public assembly permit issued by the county for a specific period of time.

Sec. 114-71 Bicycle Parking

(a) Any development generating over two thousand (2,000) trips per day shall be required to provide bicycle parking racks.

(b) All nonresidential development within 200 feet of an existing or programmed state or county bikeway shall provide a bicycle parking rack.

(c) Bicycle parking rack criteria:

(1) Bicycle parking racks must be designed to accommodate a minimum of four (4) bicycles;
(2) All bicycle parking racks shall be separated from vehicular traffic by at least five feet or a physical barrier;
(3) Bicycle racks shall be located within 100 feet of the building entrance at a location that does not interfere with pedestrian traffic; and
(4) The minimum dimensions for a bicycle parking rack shall be two-foot-wide by six-foot-long stalls with a minimum aisle width of five feet. Location criteria can be modified by the Planning Director if he or she determines that a superior alternative exists.

Secs. 114-72-114-98. Reserved.

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ARTICLE IV. LANDSCAPING

Sec. 114-99. Purpose and Intent

(a) The intent of this article is as follows:

(1) To protect the public health, safety and welfare;
(2) To provide minimum standards for landscaping new developments or for redevelopment.
(3) To enhance the appearance of the County, help improve water quality, help conserve water, and screen unattractive views; and
(4) To provide standards for the design, installation, and maintenance of landscaping that adheres to the Best Management Principles of a Florida-Friendly LandscapingTM, to preserve, protect and enhance the natural resources, encourage creative landscape design, construction and management to minimize the potential adverse impacts associated with adjacent land uses of varying intensities.

Sec. 114-100. Required Landscaping.

(a) All off-street parking areas containing more than six (6) spaces shall be landscaped in accordance with the following standards:

(1) Interior landscaping shall be installed in landscape areas designated for the purposes of controlling traffic, providing shade, screening unnecessary views into and within the vehicular use areas, and separating parking circulation and service areas.
(2) Parking lots shall be designed to be sustainable and to function as part of the development's stormwater management system, utilizing vegetated islands as bioretention/swale areas, at/or below grade and with curb cuts. Existing natural drainage ways and vegetated channels shall be incorporated into the design, rather than the standard soil mounding, continuous concrete curb and gutter configuration, to decrease flow velocity and allow for stormwater infiltration.
(3) Landscaping shall be provided in a square footage area equal to a minimum of twenty percent (20%) of the gross parking lot area (includes both parking and vehicular use area). Calculations to verify these requirements shall be shown on the landscape plan per Section 114-108. Such required parking lot landscaping area shall be in addition to other required bufferyards.
(4) No required parking lot landscaping area shall have any dimension less than five (5) feet.
(5) For all off-street parking areas containing twenty (20) or more spaces a terminal island shall be provided at the end of each row of parking adjacent to the travel lanes or parking aisle serving the parking.
(6) Island landscape areas shall be provided for at least every ten (10) parking spaces in a row.

(7) One (1) tree shall be required for every one thousand (1,000) square feet, or fraction thereof, of gross parking lot area (includes both parking and vehicular use area). Every island shall have a minimum one (1) canopy tree.
(8) Four (4) shrubs/groundcover shall be required for every one thousand (1,000) square feet, or fraction thereof, of gross parking lot area (includes both parking and vehicular use area).
(9) 100% of required parking lot landscaping material shall be native species, as listed in Section 114-105.
(10) A minimum of fifty percent (50%) of the required trees shall be native canopy species, as defined in Section 114-105, and shall have a minimum of twenty (20) feet on-center spacing.
(11) A minimum of forty percent (40%) of the required trees shall be native understory species, as defined in Section 114-105.
(12) A maximum of ten percent (10%) of the required trees may be native palm species, as defined in Section 114-105.
(13) Turf shall not be used in any of the parking lot islands; instead, canopy trees, shrubs and groundcovers shall be used.
(14) Existing native plant material that is retained and meets the planting requirements relative to location, size and species may be counted toward the total planting requirement of this section.
(15) Landscaping on each island shall be located so as not to cause a t raffic hazard. Visibility must be maintained for traffic movements. Shrubs shall not exceed thirty (30) inches in height, and trees shall be kept with at least four (4) feet of clear trunk.

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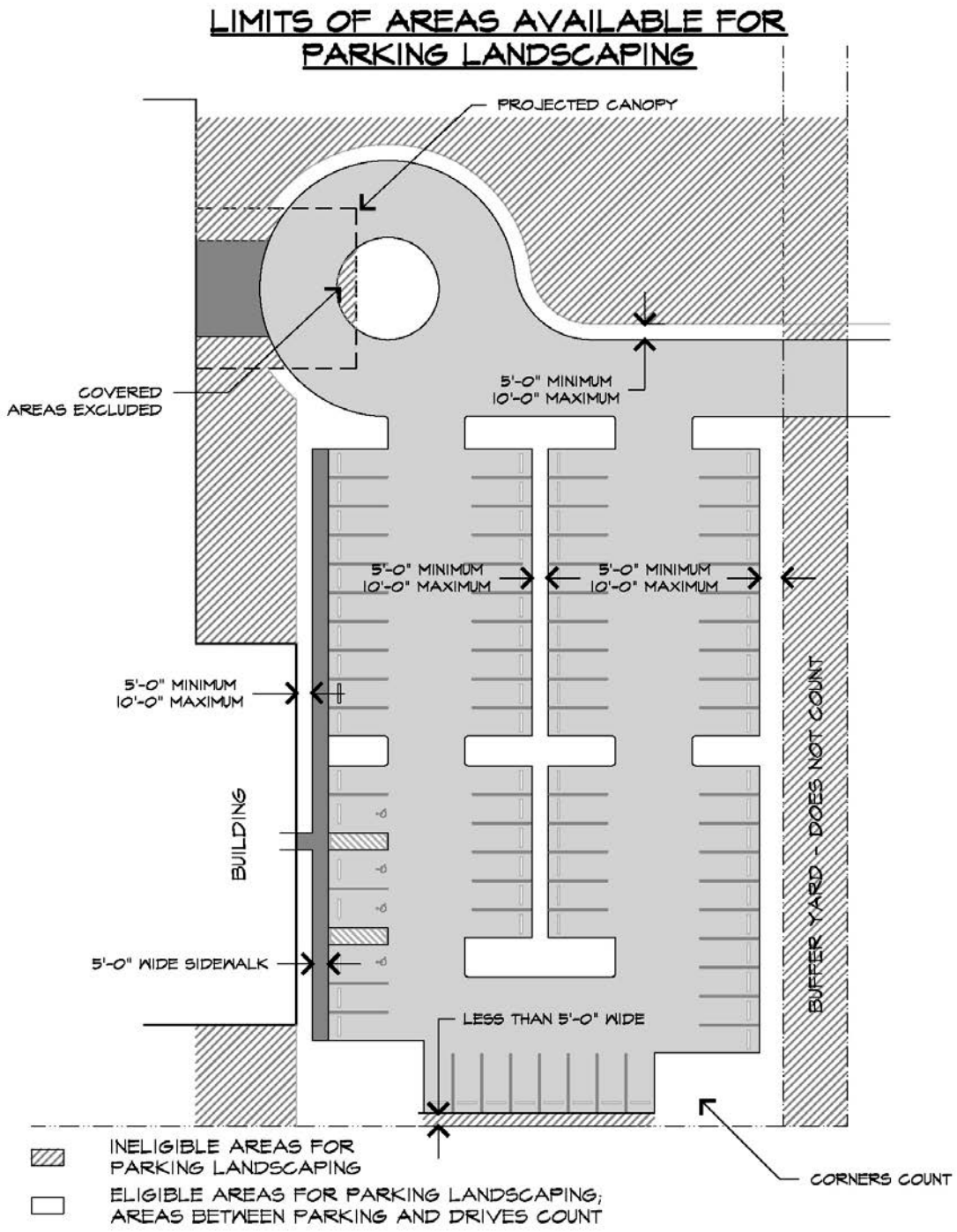
(b) Areas Available for Parking Lot Landscaping.



Sec. 114-101. Irrigation Standards.

All proposed irrigation systems shall meet the requirements of this section.

(a) Water can be conserved through the use of a properly designed, managed, maintained, and timed irrigation system. Irrigation systems shall only provide coverage to target areas, and shall be installed in such a manner as to minimize spray upon public sidewalks, streets, or adjacent properties. Irrigation systems shall include the use of low volume, low pressure, subsurface irrigation systems, and other such methods which encourage water conservation. All automatic lawn or landscape irrigation systems shall be equipped with and operate a moisture sensor or approved automatic switch which overrides the irrigation cycle when adequate rainfall and/or soil moisture level has occurred.

(b) Irrigation plans must be designed to recognize differential irrigation requirements of the landscape. The irrigation plan shall be designed by a Registered Landscape Architect and/or a Certified Irrigation Specialty Contractor. The irrigation plan shall include the following:

(1) Irrigation point(s) of connection (POC) and design capacity;
(2) Water service pressure at irrigation POCs;
(3) `Water meter size;
(4) Reduced-pressure-principle backflow-prevention devices for each irrigation POC on potable water systems;
(5) Major components of the irrigation system shall include, but not be limited to; smart controller, rain sensors, pumps, filters, valves, mainline pipes, lateral pipes, controllers, flow sensor, spray heads, drip, low-volume irrigation equipment, tubing, and pipe sizes;
(6) Precipitation rate expressed in inches per hour for each valve circuit. The preparer must attach calculations for deriving precipitation rates for each irrigation valve circuit;
(7) Total flow rate (flow velocity not to exceed five (5) feet per second) in gallons per minute (gpm) and operating pressure (PSI) for each individual overhead and bubbler circuit, and gallons per hour (GPH) and operating pressure for low-flow point irrigation circuit;
(8) Irrigation legend must have the following elements: Separate symbols for irrigation equipment. For each irrigation head type the legend shall show coverage patterns, precipitation rates, operation pressure requirements, gallons required and associated time periods, brand and model names, and pressure compensating devices (if applicable) and a general description of other equipment, including brand name and model number, sizes, special features, and materials. For all specified equipment for low-flow systems, the legend shall contain recommended operating pressure, brand name and model names, precipitation rates, distribution patterns, and spacing of emitters or drip tubing;

(9) The same requirements for use of a recycled water irrigation system shall apply. Reclaimed water, gray water, or other nonpotable water shall be used for irrigation provided an acceptable source for that water is available;
(10) Identify location of the rain shut-off devices and any soil moisture sensors; and
(11) The irrigation system must account for slopes over ten percent (10%) and elevation differences over five (5) feet. If the irrigation plan does not show design for these situations, a grading plan is required which shall indicate finish grades by either spot elevations or contours or both along with drainage patterns within the developed irrigated areas.

Sec. 114-102. Landscape Installation and Maintenance Criteria.

(a) Plant species shall conform at a minimum to the standards for Florida No. 1 or better, as given in "Grades and Standards for Nursery Plant," State Department of Agriculture and Consumer Services, Division of Plant Industry, Tallahassee. All plant material shall be free of disease, invasive pests, and invasive fungi and shall be one of the species shown in Section 114-105 or shall be certified by the county biologist as native or tropical in character.

(b) All plant material shall be installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy growth.

(c) All plant material shall be planted with a minimum of six inches of planting soil and mulched to a depth of four inches. All trees shall be properly guyed or staked at the time of planting.

(d) All plant material shall be planted in a manner that is not intrusive to utilities or pavement.

(e) Plant material that dies shall be replaced in accordance with the integrity of the approved landscape plan.

(f) One hundred percent (100%) of the plant material used to satisfy landscaping requirements shall be native species in accordance with Section 114-105.

(g) Shrubs and hedges shall be maintained at a height not to exceed three (3) feet if located within the clear sight triangle as defined in Section 114-201.

(h) Invasive exotic plant species, as defined in Section 101-1, shall not be planted within the County, including but not limited to:

(1) Melaleuca, *Melaleuca quinquinerva*;
(2) Australian Pine, *Casuarina (Spp.)*;
(3) Brazilian Pepper, *Schinus terebinthifolius*;
(4) Sapodilla, *Manilkara zapota*, north of the Seven Mile Bridge;

(5) Latherleaf, *Colubrina asiatica*;
(6) Lead Tree, *Leucaena leucocephala*;
(7) Seaside Mahoe, *Thespesia populnea*;
(8) Bowstring Hemp, *Sansevieria hyacinthoides*; and
(9) Beach Naupaka, *Scaevola taccada*.

Sec. 114-103. Removal or Major Pruning of Required Landscaping and Bufferyards.

Except for those species identified as invasive exotic plant species or identified in Section 114-102(h), removal of any tree, or major pruning of any tree over six inches DBH, required as landscaping, a street tree, or as part of a bufferyard pursuant to Sections 114-100, 114-104, or 114-124, shall require a d evelopment permit. All such activity shall adhere to practices and principles set by the American National Standards Institute ("ANSI") A-300, Standards for Tree Care Operations: Tree, Shrub and Other Woody Plant Maintenance-Standard Practices, and Z133.1-2006 Arboricultural Operations: Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush - Safety Requirements.

Sec. 114-104. Street Trees.

All street fronts shall plant native canopy street trees. Such trees shall be native canopy trees, not intrusive to utilities or pavement, and shall be installed pursuant to a landscape plan, with the number of trees to be equal to at least one (1) canopy tree (three inches caliper) per one-hundred (100) feet of street length, provided that in no event will less than one street tree be provided for every parcel. Native canopy trees installed along the street as landscaping or a bufferyard required by Section 114-100 or 114-124 may satisfy this requirement. Preservation of existing natural native vegetation takes priority and may satisfy this requirement.

Sec. 114-105. Landscaping materials.

All required landscaping materials shall be of the types and minimum sizes set forth in this section. Canopy trees shall be a minimum of twelve (12) feet in overall height or a minimum tree caliper dimension of three (3) inches (measured at six (6) inches above grade) at the time of installation.. Understory trees shall be a minimum of five (5) feet in height. Shrubs shall be a minimum of two (2) feet in height at the time of installation.

C = Canopy	G = Ground cover	T = Threatened (Florida)
U = Understory	V = Vine	E = Endangered (Florida)
S = Shrub	ST = Street tree	RI = Regionally Important
P = Palm	SA = Salt tolerant	

(a) Native Planting List*

NATIVE PLANTING LIST*			
Common Name	***Latin Name***	***Type***	***Status****
Bahama Cassia	*Cassia chapmanii*	S	T
Bahia Honda Andira	*Andira inermis*	C, ST	
Bahia Honda Lime	*Zanthoxylum flavum*	U, ST	E
Bay Cedar	*Suriana maritima*	S, SA	RI
Beautyberry	*Callicarpa americana*	S	
Black Ironwood	*Krugiodendron ferreum*	C, U, ST	RI
Blackbead	*Pithecellobium keyense*	U, S	T
Blacktorch	*Erithalis fruticosa*	S	T
Blolly	*Guapira discolor*	U, S, ST, SA	
Buccaneer Palm	*Pseudophoenix sargentii*	C, U, P	E
Buttonwood, Silver Buttonwood	*Conocarpus erectus*	C, U, S, ST, SA	
Cabbage Palm	*Sabal palmetto*	C, U, P, SA	
Cat's Claw	*Pithecellobium unguis-cati*	U, S	
Christmas Berry	*Lycium carolinianum*	S, G, SA	RI
Cinnamonbark	*Canella winterana*	U, S	E
Coffee Colubrina	*Ceanothus arborescens*	C, U, ST	E
Coontie	*Zamia Integrifolia*	S, G	
Crabwood	*Ateramnus lucidus*	U, ST	RI
Cuba Colubrina	*Colubrina cubensis*	U	E
Cupania	*Cupania glabra*	U	E
Darling Plum	*Reynosia septentrionalis*	U	T
Everglades Velvetseed	*Guettarda elliptica*	U, ST	RI
Fiddlewood	*Citharexylum spinosum*	U	RI
Firebush	*Hamelia patens var. patens*	S	
Florida Forestiera, Florida Swampprivet	*Forestiera segregata*	S	RI
Florida Thatch Palm	*Thrinax radiata*	U, S, P	E
Florida Trema	*Trema micranthum*	U, S	RI
Geiger Tree	*Cordia sebestena*	C, U, ST	RI
Gumbo Limbo	*Bursera simaruba*	C	
Inkberry	*Scaevola plumieri*	U, S, SA	T
Inkwood	*Exothea paniculata*	C, ST	RI
Jamaica Caper	*Capparis cynophallophora*	S	

Common Name	***Latin Name***	***Type***	***Status****
Jamaica Dogwood	*Piscidia piscipula*	C, ST	
Joewood	*Jacquinia keyensis*	U, S, SA	T
Keys Thatch Palm	*Thrinax morrisii*	U, S, P	T
Lancewood, Jamaica Nectandra	*Nectandra coriacea*	C, U, ST	RI
Lignum Vitae	*Guaiacum sanctum*	U, S, ST	E
Limber Caper	*Capparis flexuosa*	U	
Locustberry	*Brysonima lucida*	S	T
Mahogany	*Swietenia mahagoni*	C, ST	T
Maidenbush	*Savia bahamensis*	S	E
Marlberry	*Ardisia escallonioides*	U, S	
Mastic	*Mastichodendron foetidissimum*	C, ST	RI
Mayten	*Maytenus phyllanthoides*	S, SA	T
Milkbark	*Drypetes diversifolia*	C, U, ST	E
Myrsine	*Myrsine Floridana*	U, S	
Paradise Tree	*Simarouba glauca*	C, ST	RI
Pearlberry	*Vallesia antillana*	G	E
Pigeon Plum	*Coccoloba diversifolia*	C, ST	
Pisonia	*Pisonia rotundata*	U, S	E
Pitch Apple, Autograph Tree	*Clusia rosea*	C, ST	
Poisonwood	*Metopium toxiferum*	C, ST	
Pondapple	*Annona glabra*	U	
Potato Tree	*Solanum erianthum*	U, S	
Prickly Apple Cactus	*Harrisia fragrans*	S	E
Princewood	*Exostema caribaeum*	C, U, ST	E
Randia, White Indigoberry	*Randia aculeata*	S	
Red Stopper	*Eugenia rhombea*	S	E
Redbay	*Persea borbonia*	C	RI
Redberry Stopper	*Eugenia confusa*	S	E
Rhacoma	*Crossopetalum rhacoma*	U, S	T
Saffron Plum	*Bumelia celastrina*	U	
Saltbush	*Baccharis halimifolia*	C, SA	
Satinleaf	*Chrysophyllum oliviforme*	C, U, ST	T
Saw Palmetto	*Serenoa repens*	S, P	
Sea Lavendar	*Tournefortia gnaphalodes*	S	E

Common Name	***Latin Name***	***Type***	***Status****
Seagrape	*Coccoloba uvifera*	C, S, ST, SA	
Seven-Year Apple	*Genipaclusiifolia*	U	RI
Shortleaf Fig	*Ficus citrifolia*	C	
Silver Palm	*Coccothrinax argentata*	U, S, P	T
Slash Pine	*Pinus elliottii var. densa*	C	RI
Snowberry	*Chiococca alba*	S, G	
Soapberry	*Sapindus saponaria*	U	RI
Spanish Bayonet	*Yucca aloifolia*	S	
Spanish Stopper	*Eugenia foetida*	U, S	
Spicewood, Pale Lidflower	*Calyptranthes pallens*	U, S	RI
Strangler Fig	*Ficus aurea*	C	
Strongback	*Bourreria ovata*	U	E
Sweet Acacia	*Acacia farnesiana*	U, S	RI
Tallowwood, Hog Plum	*Ximenia americana*	U	
Torchwood	*Amyris elemifera*	U	RI
Wax-Myrtle	*Myrica cerifera*	U, S	
West Indian Cherry	*Prunus myrtifolia*	U	T
West Indian Lilac	*Tetrazygia bicolor*		T
West Indies Trema	*Trema lamarckiana*	S	E
White Ironwood	*Hypelate trifoliata*	U, ST	E
White Stopper	*Eugenia axillaris*	U, ST	
Bahama Wild Coffee	*Psychotria ligustrifolia*	S	E
Wild Coffee	*Psychotria nervosa*	S	
Wild Dilly	*Manilkara bahamensis*	U	T
Wild Lantana	*Lantana involucrata*	S	
Wild Lime	*Zanthoxylum fagara*	S	RI
Wild Tamarind, Lysiloma	*Lysiloma latisiliquum*	C, ST	
Willow Bustic	*Dipholis salicifolia*	C, U, ST	

*The list is to be used as a representative sampling, and by no means a complete inventory of the species that are native to South Florida or the Florida Keys. For a determination of what constitutes a native plant, contact the County Biologist.

**This list is to be used as a representative sampling, and by no means a complete inventory of threatened, endangered, or regionally important species. Any species listed as threatened, endangered, or regionally important under the provisions of the federal Endangered Species Act, and/or Florida Statutes, and/or the Florida Endangered and Threatened Special Act shall be considered as such.

(b) Swale Planting List*

The following native plants may be used in the swale for stormwater management, with consideration given to stormwater management volume.

SWALE PLANTING LIST*		
Common Name	***Latin Name***	***Type***
Bahama wild coffee	*Psychotria ligustrifolia*	S
Bay cedar	*Suriana maritime*	S
Beach creeper, Coughbush	*Ernodea littoralis*	S
Blue morning glory	*Ipomea indica*	V
Cocoplum	*Chrysobalanus icaco*	S
Darlingplum	*Reynosia septentrionalis*	U
Dune sunflower	*Helianthus debilis*	G
Elliott's lovegrass	*Eragrostis elliottii*	G
Firebush	*Hamelia patens* var. *patens*	S
Florida Keys blackbead	*Pithecellobium keyense*	U
Florida mayten	*Maytenus phyllanthoides*	S
Florida thatch palm	*Thrinax radiata*	U, S, P
Grape	*Vitus* spp.	V
Joewood	*Jacquinia keyensis*	U, S
Moonflower	*Ipomea alba*	V
Myrsine	*Myrsine cubana*	U, S
Pineland heliotrope	*Heliotropium polyphyllum*	G
Randia, White indigoberry	*Randia aculeate*	S
Saltmeadow cordgrass	*Spartina patens*	G
Spider lily	*Hymenocallis latifolia*	G
Wax-myrtle	*Myrica cerifera*	U, S
Wild coffee	*Psychotria nervosa*	S
*The list is to be used as a representative sampling, and by no means a complete inventory of the species that are native to South Florida or the Florida Keys. For a determination of what constitutes a native plant, or potential sight line conflicts, contact the County Biologist.		

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Sec. 114-106. Landscape Incentives.

Incentives are provided to increase water conservation, biological diversity, and sustainable landscaping, subject to approval by the County Biologist. The following activities are encouraged:

(a) Pervious pavers over two hundred fifty (250) square feet, not located within the required open space, shall allow the reduction of one (1) required understory tree or three (3) required shrubs.

(b) Butterfly gardens consisting of at least two (2) larval host plants, and two (2) nectar source plants shall allow the reduction of one (1) required understory tree. Pursuant to approval from the County Biologist, additional reductions may be allowed for plant species that benefit native butterfly species that are endangered, threatened, or otherwise protected.

(c) Replacement of turf grass or sod areas to artificial turf or a native plant bed shall allow the reduction of three (3) required shrubs.

Sec. 114-107. Rainwater Collection System Criteria

(a) Rainwater collection systems exceeding 275 gallons shall require a building permit, in accordance with Chapter 6 of the Monroe County Code. In addition to any requirements of the Monroe County Building Department, the building permit application shall include the following:

(1) Site plan indicating the location of the rainwater collection system;
(2) Location of, and permit for, electrical connections, if applicable; and
(3) Proposed clearing and/or tree relocation.

(b) Unless otherwise required by Chapter 6 of the Monroe County Code , rainwater collection systems of 275 gallons or less shall not require a building permit, provided that the system:

(1) is not proposed to be located within any required setback;
(2) does not require an electrical connection; and
(3) does not require clearing or tree relocation.

(c) Rainwater collection systems may be located within a required rear setback provided that:

(1) a building permit is obtained for the collection system;
(2) the system is located at least five (5) feet from any property line; and
(3) screening is provided by a solid fence of at least 6 feet in height and/or a Class B bufferyard on all sides visible to adjacent properties.

Sec. 114-108. Landscaping Plan Required.

(a) An applicant for development approval who is required to install landscaping shall submit a landscaping plan as part of the development permit application.

(b) The landscaping plan shall include all of the following:

1. Name of existing or proposed development;
2. Name, location, quantity, size, and type of existing and proposed vegetation and landscaping on the site, and its relation to other site features such as existing and proposed buildings, utilities and easements;
3. Plant schedule, including a plant list with the botanical and common name, size and quantity of proposed plantings;
4. Existing trees of four (4) inches DBH or greater to be retained, proposed for removal or relocation;
5. Proposed building footprints; drives, walks, patios, parking areas, lighting and other hardscape improvements;
6. Scale, date, north arrow, and street names;
7. Existing and proposed utilities; and
8. Calculation chart verifying landscape requirements being met.

Sec. 114-109. Nonconforming Landscaping.

All lawfully existing multi-family (3 or more units) and nonresidential development that is nonconforming to the landscaping standards of this article shall be brought into compliance as follows:

(a) When any change of use or expansion of the use occurs, the site shall come into compliance with the landscaping requirements of this article to the greatest extent practicable, as approved by the Planning Director on a case-by-case basis.

(b) When any substantial improvement occurs, the property shall come into full compliance with the landscaping requirements of this article.

Secs. 114-110—114-123. Reserved.

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ARTICLE V. SCENIC CORRIDOR AND BUFFERYARDS

Sec. 114-124. Required.

No structure or land that abuts U.S. 1, SR 905 or SR 940 (Key Deer Boulevard), a boundary between two different land use (zoning) districts, or fronts on a major street shall hereafter be developed, used or occupied unless a scenic corridor or bufferyard is provided in accordance with the requirements of this article. No structure other than a fence shall be placed within a required bufferyard, provided that where there is existing native vegetation that will provide for a bufferyard, no clearing will be permitted for the installation for a fence.

Sec. 114-125. Scenic Corridor.

(a) All development of any parcel of land that fronts on U.S. 1, 905 or 940 (Key Deer Boulevard) and is designated as hammock, mangrove or transitional habitat and is vegetated with plants native to the Florida Keys shall be developed so that a scenic corridor buffer is provided in accordance with Section 114-127.

(b) All other development of land that fronts on U.S. 1, 905 or 940 (Key Deer Boulevard) shall provide a major street buffer in accordance with Section 114-127.

Sec. 114-126. District Boundary Buffers.

(a) Bufferyards required by Section 114-124 along district boundaries shall be provided in accordance with the following table:

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District Boundary Buffer Standards																									
Land Use (Zoning) District	*Adjoining District*																								
	UC	UR	URM	URM-L	C1	C2	SC	SR	SS	NA	MN	OS	IS	DR	RV	CFA	CFV	CFS	MU	I	MI	MF	AD	PR	P
UC	-	C	C	C	-	-	-	D	F	B	B	F	D	B	C	G	G	G	-	-	B	-	-	-	F
UR	C	-	C	C	C	C	C	C	E	A	A	E	B	C	D	H	H	H	C	C	D	D	-	-	E
URM	C	C	-	C	B	C	B	C	B	E	E	B	C	D	D	C	C	C	C	H	D	C	-	-	B
URM-L	C	C	C	-	B	C	B	C	B	B	E	B	C	D	D	C	C	C	C	H	D	C	-	-	B
C1	-	C	B	B	-	-	-	D	C	B	B	F	D	B	C	G	G	G	-	A	B	-	-	-	F
C2	-	C	C	C	-	-	-	D	F	B	B	F	D	B	C	G	G	G	-	-	B	-	-	-	F
SC	-	C	B	B	-	-	-	D	C	B	B	F	D	B	C	G	G	G	-	A	B	-	-	-	F
SR	D	C	C	C	D	D	D	-	E	A	A	D	B	D	E	H	H	H	D	D	E	E	-	-	D
SS	F	E	B	B	F	F	F	D	-	A	A	D	D	E	E	G	G	G	D	E	F	F	-	-	D
NA	B	A	E	E	B	B	B	A	A	-	-	A	-	B	C	A	A	A	B	C	C	-	-	-	A
MN	B	A	E	E	B	B	B	A	A	-	-	-	-	B	C	A	A	A	B	C	C	C	-	-	-
OS	F	E	B	B	F	F	F	D	D	A	-	-	D	E	E	G	G	G	D	E	F	F	-	-	-
IS	D	B	C	C	D	D	D	B	D	-	-	D	-	D	E	H	H	H	D	D	E	D	-	-	D
DR	B	C	D	D	B	B	B	D	E	B	B	E	D	-	C	H	H	H	C	C	E	D	-	-	E
RV	C	D	D	D	C	C	C	E	E	C	C	E	E	C	-	H	H	H	B	C	E	D	-	-	E
CFA	G	H	C	C	G	G	G	H	G	A	A	G	H	H	H	-	-	-	-	-	B	-	-	-	G
CFV	G	H	C	C	G	G	G	H	G	A	A	G	H	H	H	-	-	-	-	-	B	-	-	-	G

District Boundary Buffer Standards																									
Land Use (Zoning) District	*Adjoining District*																								
	UC	UR	URM	URM-L	C1	C2	SC	SR	SS	NA	MN	OS	IS	DR	RV	CFA	CFV	CFS	MU	I	MI	MF	AD	PR	P
CFS	G	H	C	C	G	G	G	H	G	A	A	G	H	H	H	-	-	-	-	-	B	-	-	-	G
MU	-	C	C	C	-	-	-	D	D	B	B	D	D	C	B	-	-	-	-	A	B	-	-	-	D
I	-	C	H	H	A	-	A	D	E	C	C	E	D	C	C	A	A	A	A	-	-	-	-	-	E
MI	B	D	D	D	B	B	B	E	F	C	C	F	E	E	E	B	B	B	B	-	-	-	-	-	F
MF	-	D	C	C	-	-	-	E	F	-	C	F	D	D	D	-	-	-	B	-	-	-	-	-	F
AD	B	D	D	D	B	B	B	D	D	D	-	-	D	D	D	D	D	D	B	B	B	-	-	D	-
PR	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	B	B	-	D	-	-
P	F	E	B	B	F	F	F	D	D	A	-	-	D	E	E	G	G	G	D	E	F	F	-	-	-

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(b) Where a district boundary runs along a canal, the following rules apply:

(1) No buffer is required if the specified buffer is an A or B buffer.
(2) All other buffers shall be reduced as follows:

C to A
D to B
E to C
F to D
G to A
H to B

(c) Where a district boundary runs along the center line of a street, the following rules apply:

(1) No buffer is required if the specified buffer is an A, B or G buffer.
(2) All other buffers shall be reduced as follows:

C to B
D to C
E to D
F to E
H to G

(d) Where a street separates a parcel boundary from the district boundary, the following rules apply:

(1) No buffer is required if the specified buffer is an A or B buffer.
(2) All other buffers shall be reduced as follows:

C to A
D to B
E to C
F to D
G to A
H to B

(e) On a single parcel having multiple land use district designations, and/or on multiple parcels developed under a common plan or theme of development pursuant to Section 130-165 which have multiple land use district designations, required district boundary buffers may be provided along the perimeter of the development parcel(s) rather than along the internal district boundary line.

Sec. 114-127. Required Scenic Corridor and Major Street Buffers.

(a) Bufferyards required by Section 114-124 shall be provided in accordance with the following table:

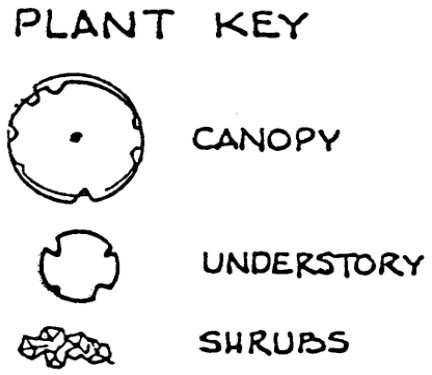
Scenic Corridor and Major Street Buffer Standards		
Land Use (Zoning) District	*Major Street Buffer*	*Scenic Corridor*
Urban commercial	B	D
Urban residential	D	E
Urban residential mobile home	D	D
Urban residential mobile home-limited	J	D
Commercial 1	C	E
Commercial 2	B	D
Suburban commercial	C	E
Suburban residential	E	F
Sparsely settled	F	F
Native area	F	F
Mainland native area	F	F
Improved subdivisions	D	D
Destination resort	D	F
Commercial fishing	E	F
Mixed use	B	F
Industrial	D	F
Maritime industries	D	F
Military facilities	C	F
Recreational vehicle	E	F
Airport	E	F
Preservation (P)		

(b) Major streets are: U.S. 1, 905, and 940 (Key Deer Boulevard). Additional major streets may be designated by the BOCC pursuant to the provisions of Chapter 102, article V.

Sec. 114-128. Bufferyard Standards.

Each of the buffers required in Sections 114-126 and 114-127 shall be installed in accordance with the standards set forth in this section. The illustrations that follow this section specify the number of plants required per one hundred (100) linear feet. To determine the total number of plants required, the length of each side of the property requiring a buffer shall be divided by one hundred (100) and multiplied by the number of plants shown in the illustrations that follows this section. Any buffer area that overlaps another buffer area shall be subtracted from the total to avoid double counting. The arrangement of the plants in the bufferyard shall be determined by the developer.

BUFFERYARDS



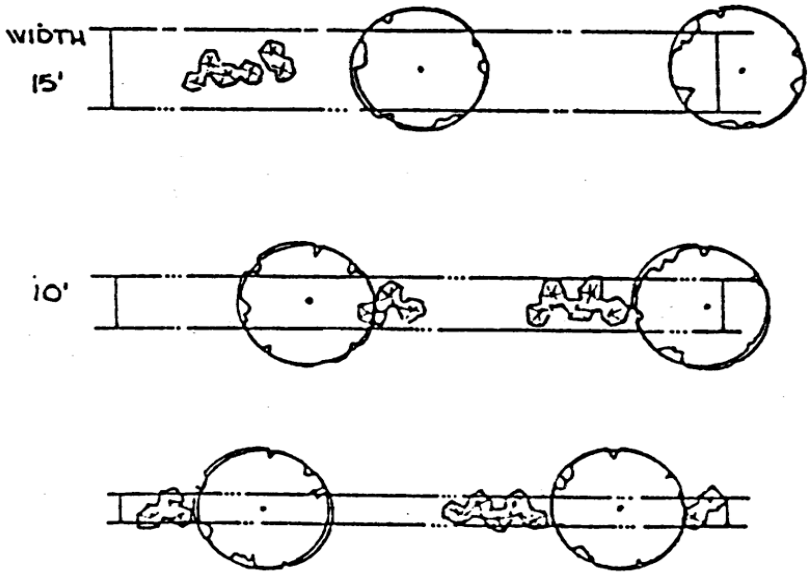
BUFFER A

PLANT MATERIAL / 100'

1.4 CANOPY
6 SHRUBS

1.6 CANOPY
8 SHRUBS

2 CANOPY
10 SHRUBS



BUFFERYARDS

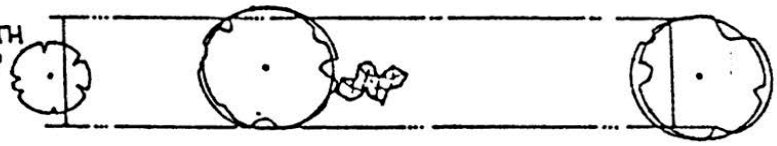
BUFFER B

PLANT MATERIAL/100'

WIDTH

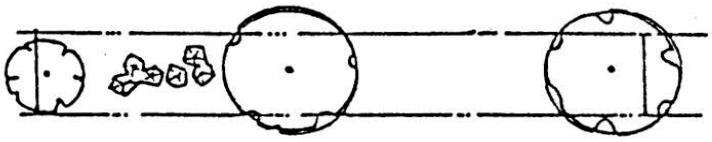
1.2 CANOPY
.4 UNDERSTORY
4 SHRUBS

20'



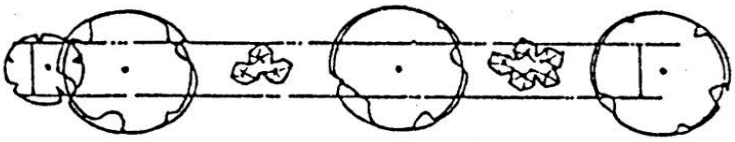
1.8 CANOPY
.6 UNDERSTORY
6 SHRUBS

15'



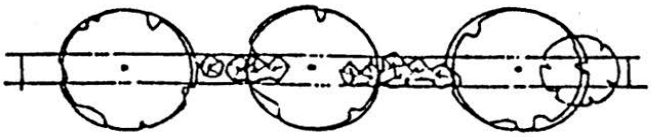
2.4 CANOPY
.8 UNDERSTORY
8 SHRUBS

10'



3 CANOPY
1 UNDERSTORY
10 SHRUBS

5'

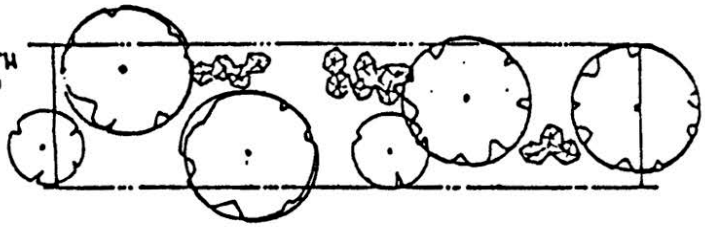


BUFFERYARDS

BUFFER C

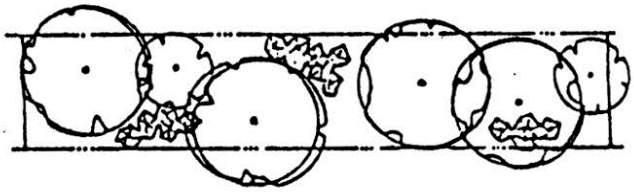
PLANT MATERIAL/100'
3.5 CANOPY
1.4 UNDERSTORY
14 SHRUBS

WIDTH
25'



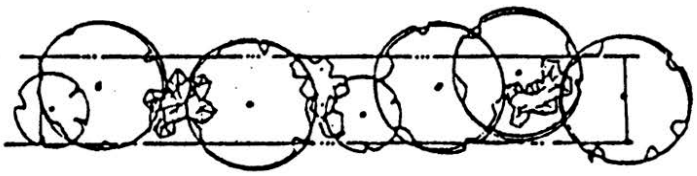
4 CANOPY
1.6 UNDERSTORY
16 SHRUBS

20'



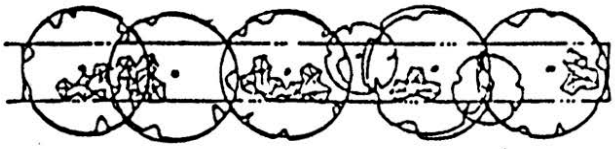
4.5 CANOPY
1.8 UNDERSTORY
18 SHRUBS

15'



5 CANOPY
2 UNDERSTORY
20 SHRUBS

10'

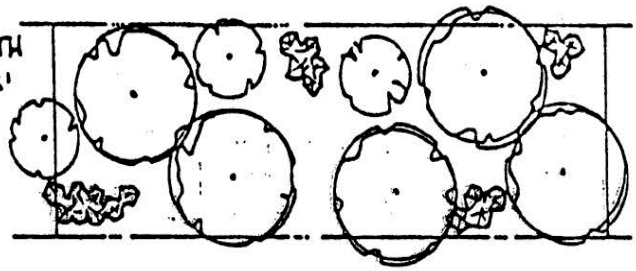


BUFFERYARDS

BUFFER D

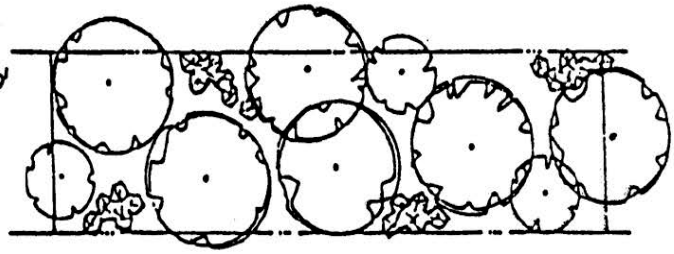
PLANT MATERAL/100'
4.8 CANOPY
2.4 UNDERSTORY
19 SHRUBS

WIDTH
35'



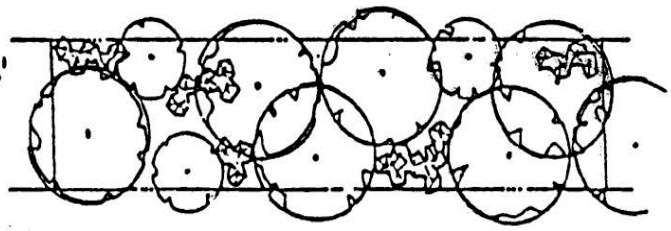
5.4 CANOPY
2.7 UNDERSTORY
22 SHRUBS

30'



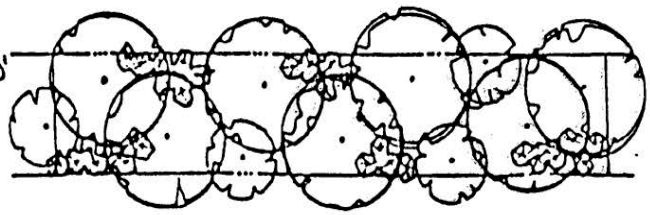
6 CANOPY
3 UNDERSTORY
24 SHRUBS

25'



6.6 CANOPY
3.3 UNDERSTORY
28 SHRUBS

20'



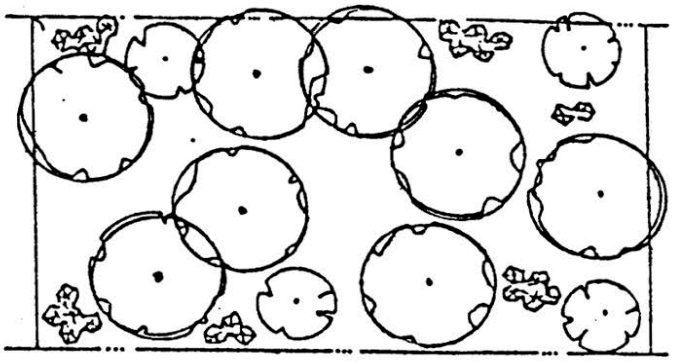
BUFFERYARDS

BUFFER E

PLANT MATERIAL /100' WIDTH

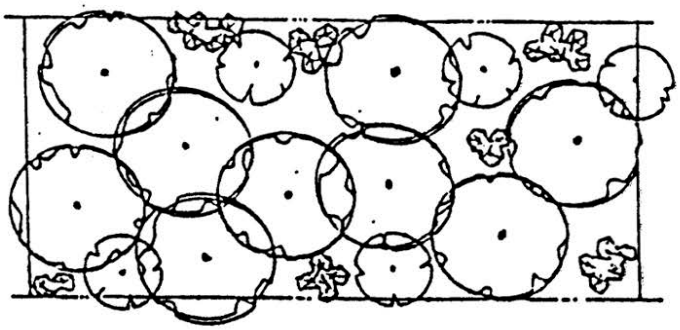
8 CANOPY
4 UNDERSTORY
24 SHRUBS

60'



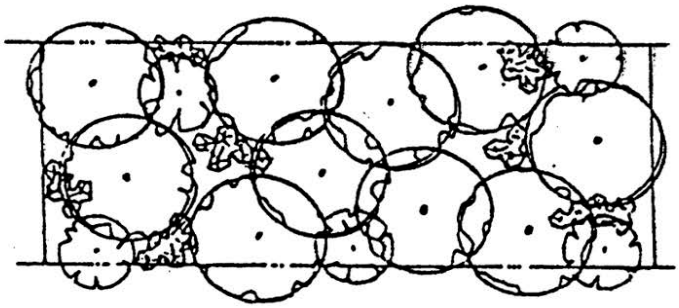
9 CANOPY
4.5 UNDERSTORY
27 SHRUBS

50'



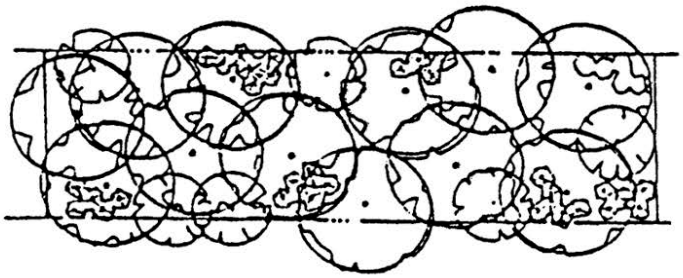
10 CANOPY
5 UNDERSTORY
30 SHRUBS

40'



12 CANOPY
6 UNDERSTORY
36 SHRUBS

30'



BUFFERYARDS

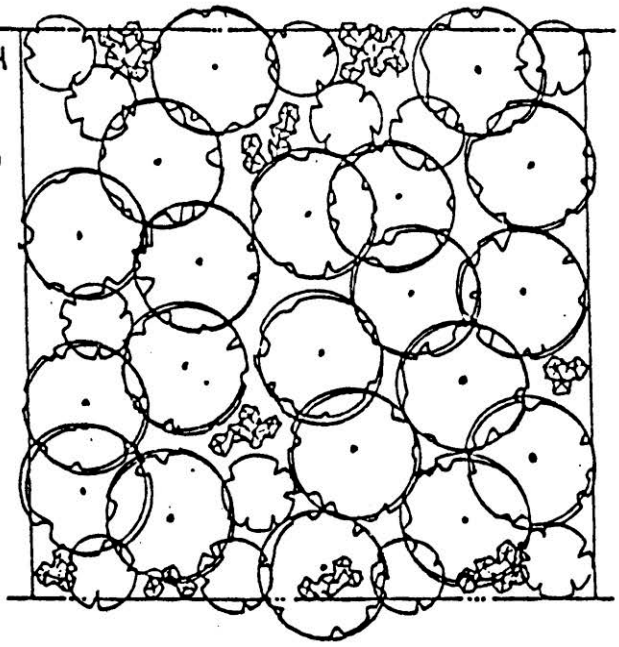
BUFFER F

PLANT MATERIAL / 100'

20 CANOPY
12 UNDERSTORY
40 SHRUBS

WIDTH

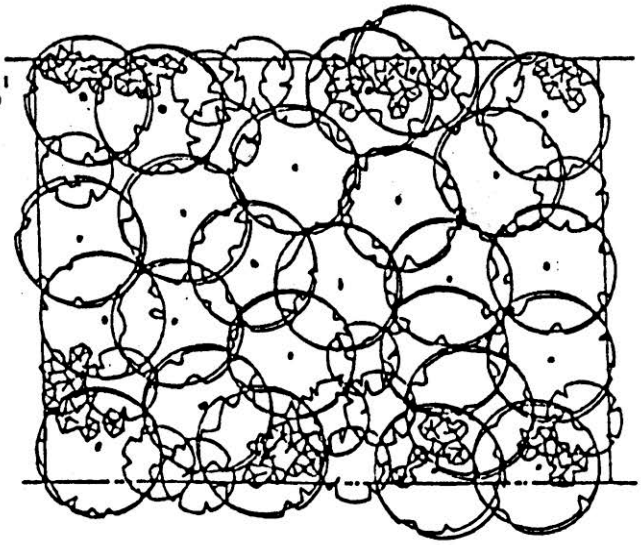
100'



25 CANOPY
15 UNDERSTORY
50 SHRUBS

3 FOOT BERM

75'



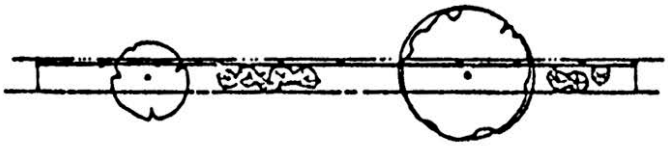
BUFFERYARDS

PLANT MATERIAL/100' WIDTH

BUFFER G

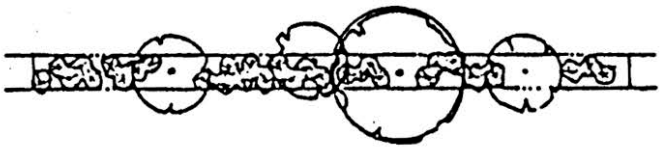
1 CANOPY
1 UNDERSTORY
8 SHRUBS
6 FOOT WOOD FENCE

5'



1 CANOPY
3 UNDERSTORY
30 SHRUBS

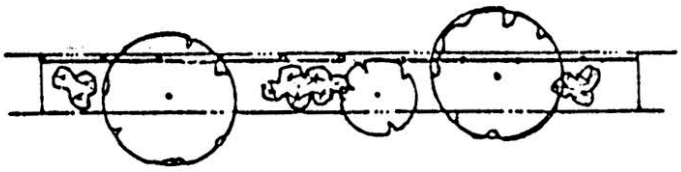
5'



BUFFER H

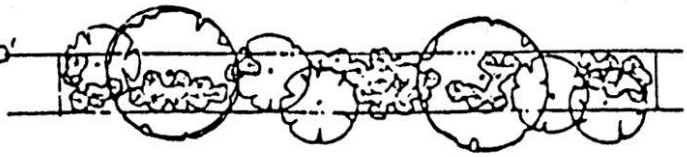
2 CANOPY
1 UNDERSTORY
12 SHRUBS
6 FOOT WOOD FENCE

10'



2 CANOPY
5 UNDERSTORY
40 SHRUBS

10'



Sec. 114-129. Responsibility for District Boundary Bufferyards.

(a) Where both sides of the district boundary are vacant:

(1) Where commercial districts abut residential districts (UR, IS, URM, URM-L, SR, SS and NA) and an E or F buffer is required, the commercial uses shall provide two-thirds (⅔) of the required buffer.
(2) In all other cases, each side shall be responsible for half (½) of the required buffer.

(b) Where one side of the boundary is developed:

(1) The new use shall be responsible for all the required buffer where no solid fence exists; but all existing canopy trees, shrubs or understory trees within ten (10) feet of the property line may be counted up to fifty percent (50%) of the required plant material.
(2) The new use shall be responsible for eighty percent (80%) of the required buffer where a solid fence exists, and may count all existing canopy trees, shrubs or understory trees within ten (10) feet of the property line up to forty percent (40%) of the specified plant material.

Sec. 114-130. Nonconforming Buffers.

(a) Where existing uses occupy both sides of a district boundary, a buffer shall be established as a condition of any permit issued for a change in use, reconstruction or addition for any nonresidential use or hotel or destination resort. The maximum buffer that can be established, given the existing buildings and drives, shall be established. If the width available is less than fifty percent (50%) of the minimum required buffer width, then a six (6) foot solid fence shall be located at the inner side of the buffer.

(b) Where street buffers are nonconforming, the maximum buffer that can be established shall be required as a condition of the issuance of any permit for change of use, expansion or reconstruction.

Secs. 114-131—114-158. Reserved.

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ARTICLE VI. OUTDOOR LIGHTING

Sec. 114-159. Outdoor Lighting.

No structure or land shall be developed, used or occupied unless all outdoor lighting conforms to the requirements of this article and the sea turtle protection provisions of Chapter 12, Article V, unless otherwise specified within this chapter.

Sec. 114-160. Outdoor Lighting Standards.

Outdoor lighting, other than that used for public athletic facilities, shall be designed, located, and mounted at a maximum height of eighteen (18) feet for noncutoff lights and thirty-five (35) feet for cutoff lights. All lighting shall be shielded so that light does not illuminate above 45° angled towards the ground.

Outdoor lighting for public athletic facilities may be designed, located, and mounted up to a maximum of seventy (70) feet in height. Except for fields designated as public athletic facilities, little league fields shall be mounted to a maximum of sixty (60) feet in height at the Key Largo Community Park.

Sec. 114-161. Maximum Illumination.

Outdoor lighting shall be designed and located such that the maximum illumination measured in footcandles at the property line shall not exceed 0.3 footcandles for noncutoff lights and 1.5 footcandles for cutoff lights. If illumination is desired or required for nonresidential or multifamily (3 or more units) residential development, site plans shall include photometric lighting plans.

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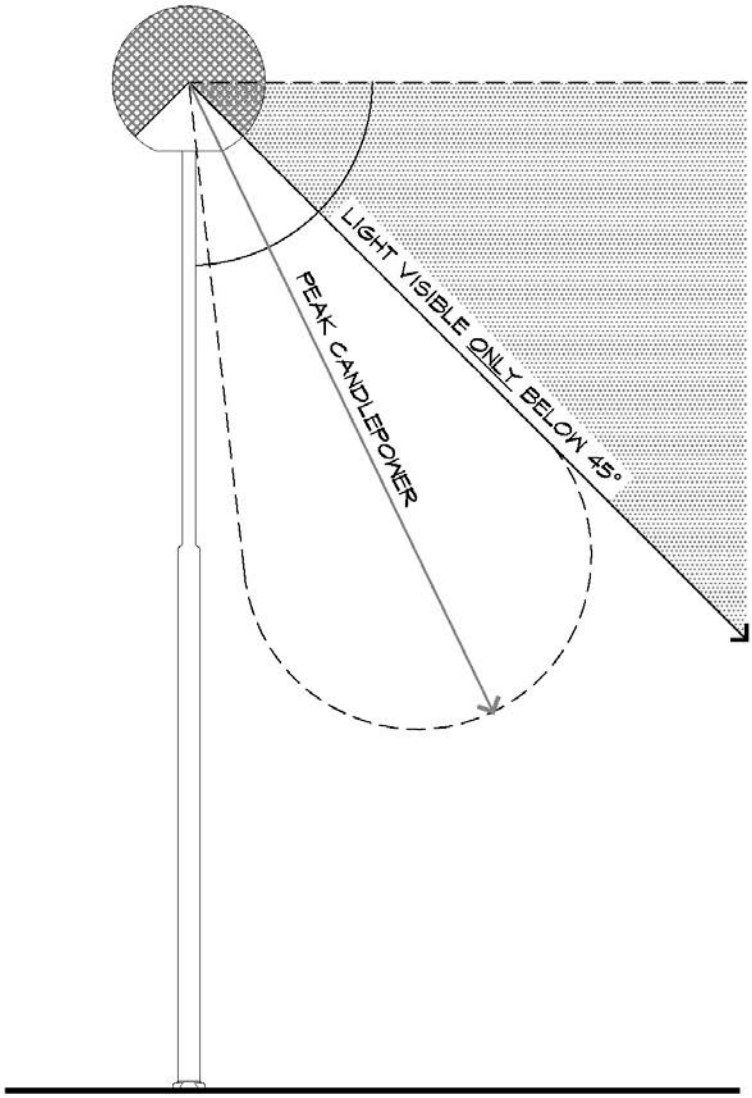
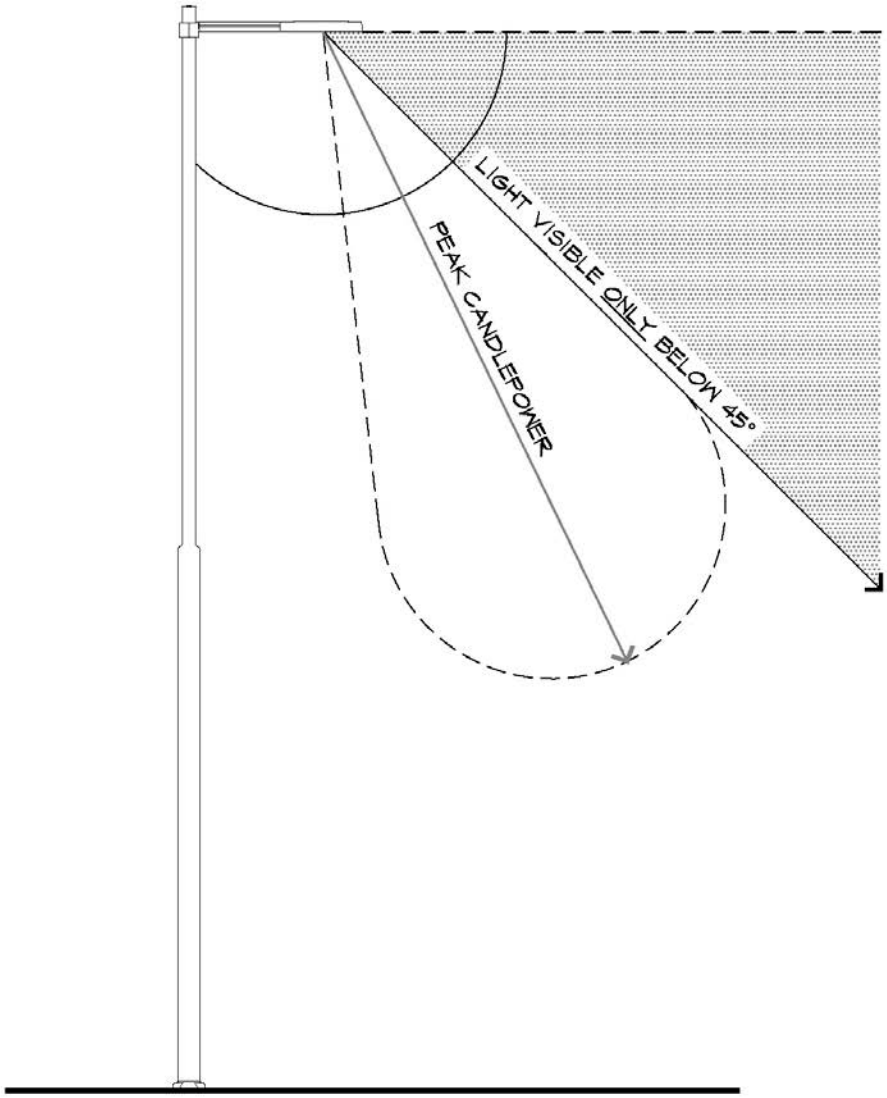
OUTDOOR LIGHTING STANDARDS
(NON-CUT OFF LIGHT)

NOTE:

NON-CUT OFF LIGHTS SHALL BE SHIELDED SO LIGHT DOES NOT ILLUMINATE ABOVE 45° ANGLED TOWARDS THE GROUND

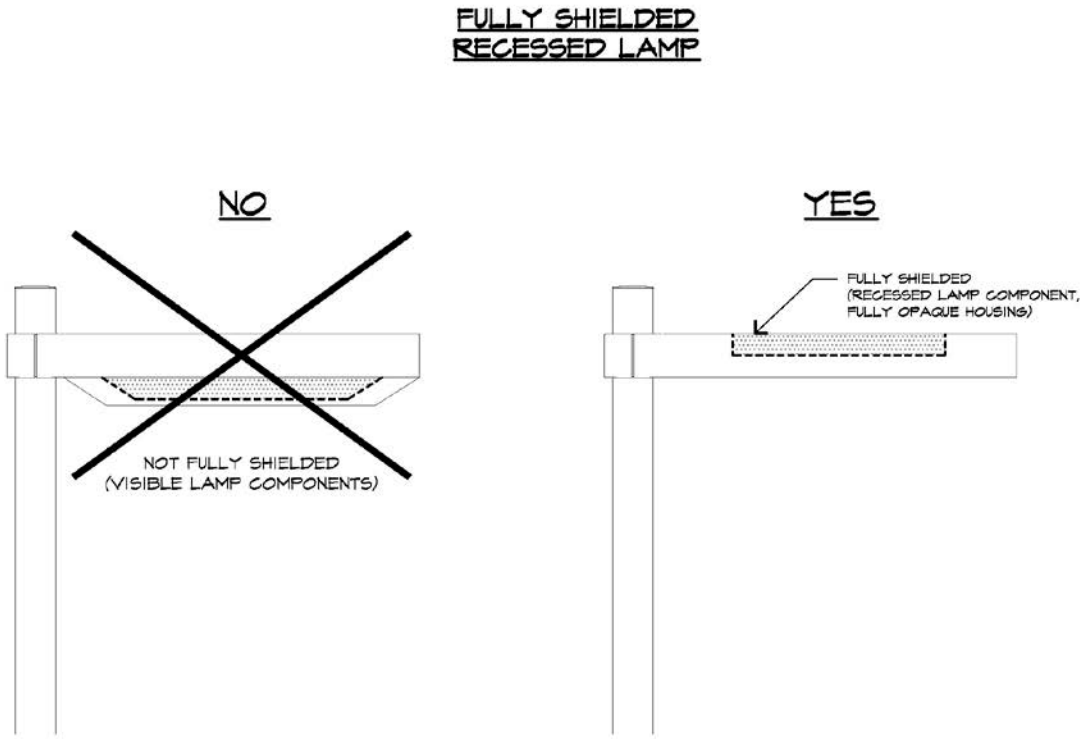


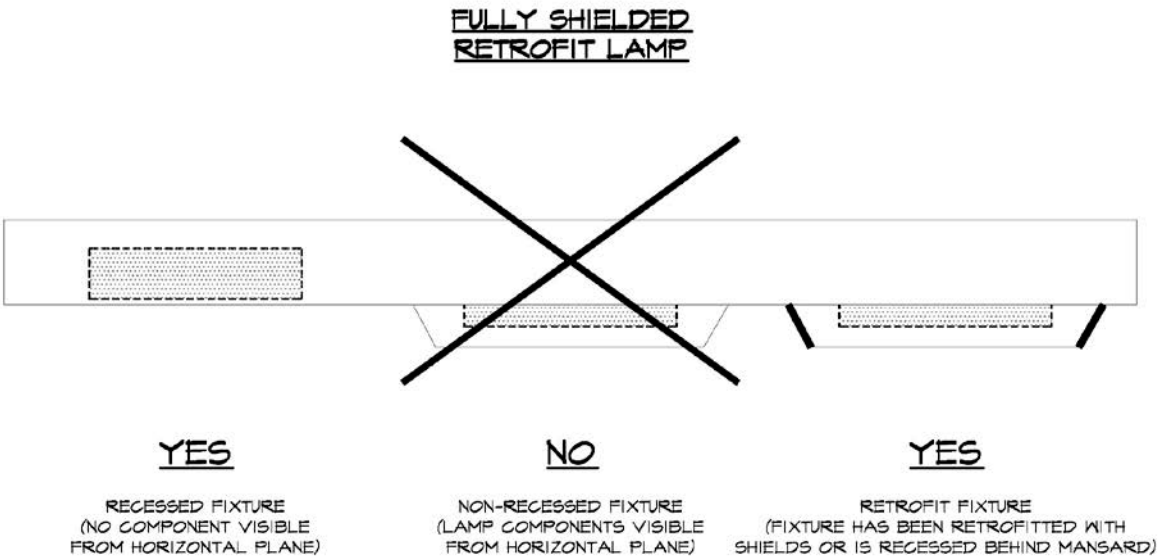
OUTDOOR LIGHTING STANDARDS
(CUT OFF LIGHT)



Sec. 114-162. Shielding of Nonresidential Lighting.

Lighting from nonresidential uses shall be located, screened and/or shielded so that adjacent residential lots are not directly illuminated





Sec. 114-163. Waterfront Lighting.

(a) Outdoor lighting within twenty-five (25) feet of any body of water shall be cutoff lights and shall not exceed a height of eighteen (18) feet above grade.

(b) Dock lighting shall comply with the following design criteria:

(1) Light fixtures shall include recessed light sources or shields;
(2) Light source shall consist of yellow bug type bulbs not exceeding 25 watts or low-pressure sodium vapor lamps;
(3) Dock lighting shall consist of low-profile, low-level luminaries no higher than 48 inches off the decking such as low-mounted wall fixtures, low bollards, and dock-level fixtures, so that the light source or any reflective surface of the light fixture is not visible from the water; and
(4) The use of red or green lights or lights that emit red or green light due to a lens or other method is prohibited

Sec. 114-164. Nonconforming Lighting.

When any change of use or expansion of a use occurs, the site shall come into compliance with the lighting requirements of this article to the greatest extent practicable, as approved by the Planning Director on a case-by-case basis.

Secs. 114-165 – 114-194. Reserved.

ARTICLE VII. ACCESS STANDARDS

Sec. 114-195. US-1/County Road 905 Access.

No structure or land shall be developed, used or occupied unless direct access to U.S. 1 or County Road 905 is by way of a curb cut that is spaced at least four hundred (400) feet from any other curb cut that meets the access standards of the Florida Department of Transportation, as contained in Chapter 14-97, F.A.C., or an existing street on the same side of U.S. 1 or County Road 905. Proposed developments with access on U.S. 1 that are designated as Class 5 or Class 6 access control classifications, as defined by FDOT, where the posted speed limit is 45 MPH or less may deviate from 400 foot standard, in accordance with the standards contained in Chapter 14-97, F.A.C., State Highway System Access Control Classification System and Access Management Standards. Proposed developments on a U.S. 1 segment of roadway with a speed limit of 50 mph or higher (segments with speeds of 50 mph or greater are defined as FDOT as a high speed facility) shall provide an exclusive right and/or left turn lane into the development, unless otherwise determined by FDOT.

Sec. 114-196. Parallel Access.

Lots that cannot meet the major road access standard in Section 114-195 shall take access from platted side streets, parallel streets or frontage roads. Such access shall be acquired by installing a parallel street or frontage road, through combined parking lots or by combining lots by sharing drives, or the provision of easements of access. However, if any permanent access is constructed pursuant to an agreement entered into under this section and such construction would otherwise render the structure located on the subject lot nonconforming under any other section of this chapter, then such structure shall be considered conforming under those other sections regardless of the terms thereof.

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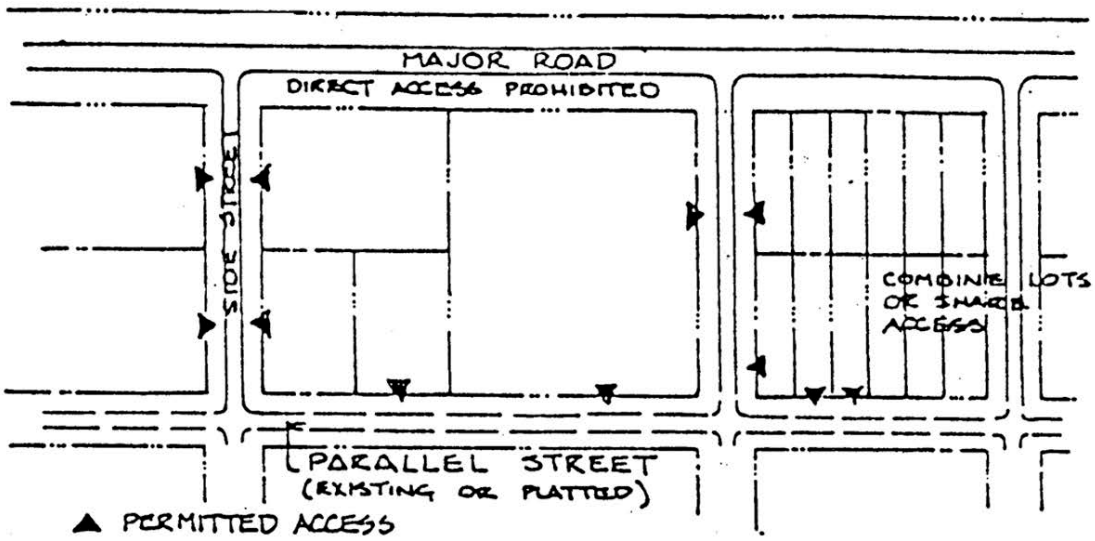
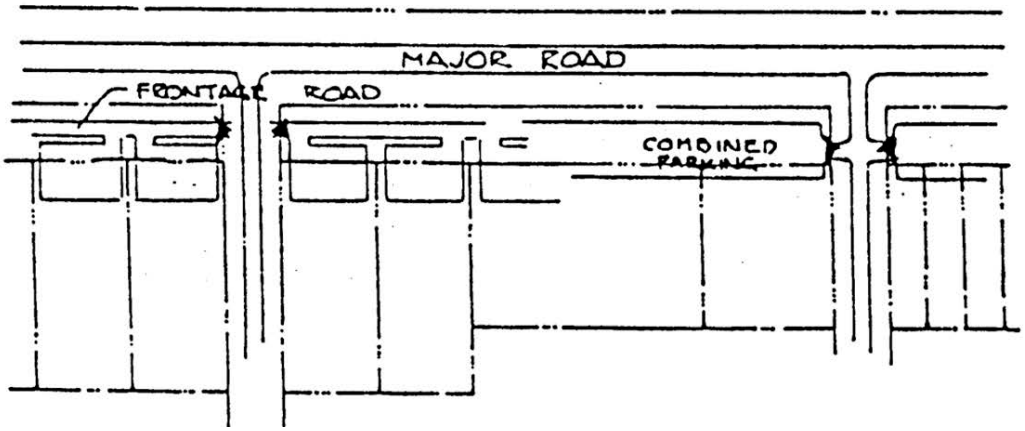
PARALLEL STREET



FRONTAGE ROADS



Sec. 114-197. Access within 250 Feet of Bridges Prohibited.

No development shall be permitted that has access to U.S. 1 by way of a curb cut that is located within two hundred fifty (250) feet of a U.S. 1 bridge abutment.

Sec. 114-198. Temporary Access.

No applicant shall be denied development approval for the sole reason that the lot cannot meet the requirements of Section 114-195 or 114-196. To provide access, the Planning Director shall issue a temporary access permit provided that the landowner's site plan provides for the eventual connection to a parallel access on an adjoining property, and that the owners agree, with suitable legal documents, to close the temporary access when connection to adjoining properties is feasible.

Sec. 114-199. Nonconforming Access.

No use fronting on U.S. 1 or County Road 905 shall receive a permit for a change of use, expansion or substantial improvement unless it is brought into conformance with this article by provision of combined drives or parallel access, and with any access standards or requirements of FDOT.

Sec. 114-200. Traffic Study.

(a) In addition to all application requirements, traffic studies by a qualified traffic engineer, as determined by the Planning Director, who is a licensed engineer in the state, shall be required as follows, in accordance with the Monroe County Traffic Report Guidelines Manual:

(1) Traffic studies shall be required for proposed development as shown in the table below, based on the anticipated number of vehicle trips per day generated by the site:

Required Traffic Studies		
Gross Daily Trip Generation*	Project Location	Type of Report Required
11 - 249	Segments of U.S.1 designated as Inadequate Capacity or Marginally Adequate Capacity according to the biennial assessment of public facilities capacity report (see Sec. 114-2).	Level 1
250 - 500	All Areas	Level 2
>500	All Areas	Level 3
*Gross Daily Trip Generation shall be calculated in accordance with the methods used in the Institute of Transportation Engineers, Trip Generation Manual, current edition.		

(2) Level 1 traffic studies shall include the following:

a. Provide a detailed assessment of the number of additional daily trips generated by the development as calculated by the most current edition of the ITE Trip Generation Manual;
b. Analysis shall be based on the project's expected trip generation broken into primary, pass-by, and internal trips, as well as the directional split and trip lengths to estimate the number of additional primary trips on US-1;
c. The report shall provide recommendations for mitigating any project trips in excess of the LOS C standard; and
d. The applicant shall be responsible for construction of the improvements recommended in the study.

(3) Level 2 traffic studies shall include all elements of a Level 1 study, plus the following:

a. Ensure adequate access to the street system;
b. The study shall also include traffic diagrams detailing the peak hour and AADT traffic counts at intersections and turning movements;
c. The data shall include background traffic (existing traffic plus traffic from approved projects) and proposed project traffic;
d. Any recommendation for a traffic signal will required an alternatives analysis;
e. All roadways and intersections along the access routes shall be evaluated for traffic safety and visibility; and
f. The study shall recommend improvements necessary to meet the accepted traffic standards for Monroe County.

(4) Level 3 traffic studies shall include all elements of both Level 1 and Level 2 studies, plus the following:

a. Ensure all intersections serving the development will operate at or above the County's LOS standards;
b. All signalized and signalized intersections within one mile of the development shall be analyzed; and
c. The study shall recommend mitigation measures for deterioration of LOS at signalized and/or unsignalized intersections.

(5) All required traffic studies shall indicate that U.S. 1 has sufficient available capacity to operate at or within five percent (5%) of a level of service of C as measured on an overall (countywide) basis as measured by the U.S. 1 Level of Service Task Force Methodology. If the proposed development will reduce the level service to more than 5% below a level of service C, the traffic study shall indicate mitigation measures required to maintain the adopted level of service.

(6) All Level 3 traffic studies shall indicate that every paved County road within one (1) mile of the parcel proposed for development and all bridges on U.S.1 within six (6) miles of the parcel proposed for development shall have sufficient available capacity to operate at minimum peak hour at or within five percent (5%) of a level of service D as measured by the methodology identified in the most recent edition of the Highway Capacity Manual. If the proposed development will reduce the level service on such roads and/or bridges to more than 5% below a level of service D, the traffic study shall indicate mitigation measures required to maintain the adopted level of service

(7) Traffic studies shall not be required for applications for a single family residence.

Sec. 114-201. Clear Sight Triangles.

All entrance drives and street intersections shall provide clear sight triangles in both directions as follows and as more fully set forth in the illustrations that follow this section. Entrance drives along U.S. 1 and street intersections with U.S. 1 shall adhere to both the clear sight triangle requirements in this section, FDOT and national American Association of State Highway and Transportation Officials (AASHTO) standards, whichever is most restrictive.

(a) Drives with bufferyard.

	Distances in feet	
Type of Street	*A**	*B***
U.S. 1	30	250
Arterials	25	200
Local streets	20	150

(b) Drives with no bufferyard.

	Distances in feet	
Type of Street	*A**	*B***
U.S. 1	35	250
Arterials	30	200
Local streets	20	150

(c) Streets with bufferyard or natural area.

	Distances in feet	
Type of Street	*A**	*B***
U.S. 1	30	300
Arterials	25	250
Local streets	20	150

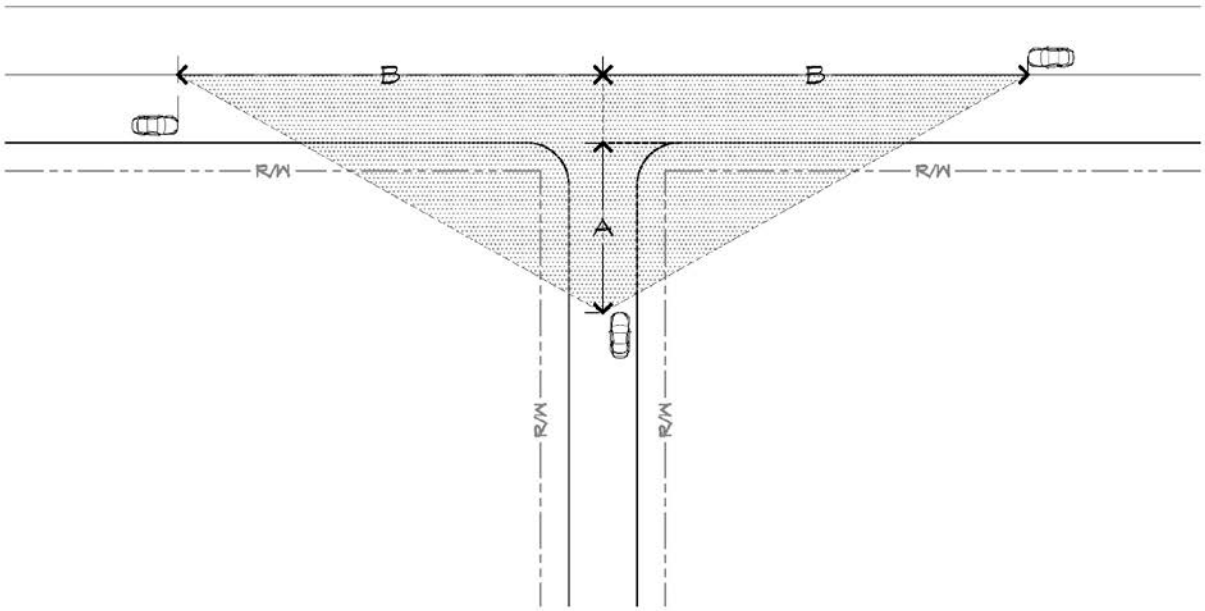
(d) Streets with no bufferyard or natural area.

	Distances in feet	
Type of Street	*A**	*B***
U.S. 1	35	300
Arterials	30	250
Local streets	20	150

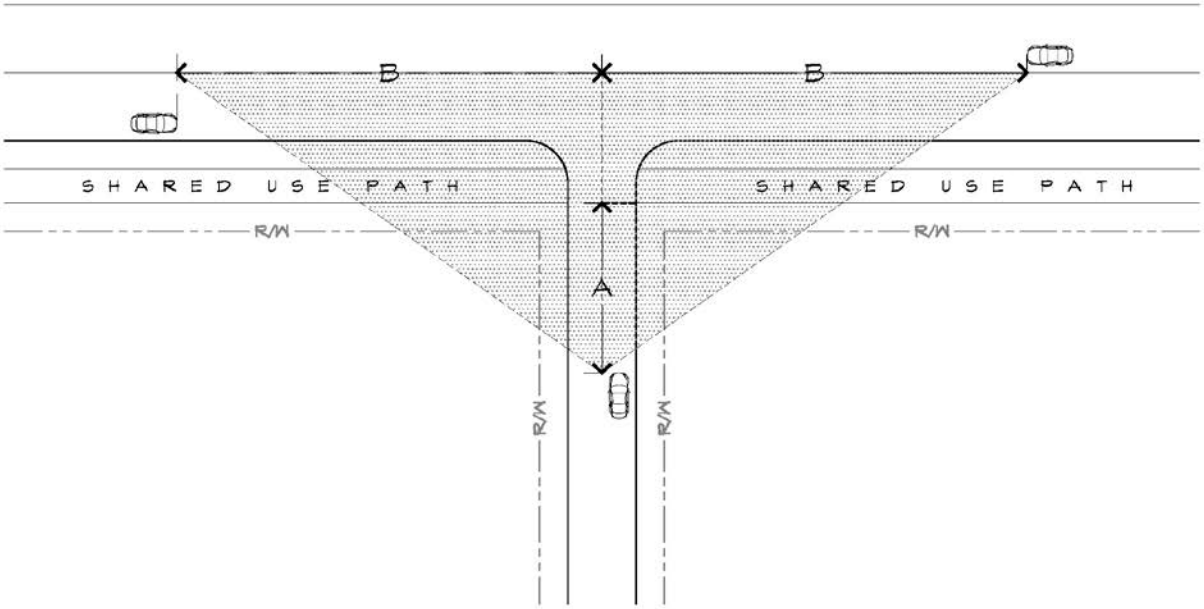
*A is the distance from the edge of pavement of the street, bicycle path, or shared use path, as applicable, to the point on the drive at which clear sight distance is required.

**B is the distance measured along the centerline of the street, from the centerline of the entrance to the point where an oncoming vehicle or bicycle must be visible.

CLEAR SIGHT TRIANGLES
(WITHOUT SHARED USE PATH)



CLEAR SIGHT TRIANGLES
(WITH SHARED USE PATH)



Chapter 118 ENVIRONMENTAL PROTECTION

ARTICLE I. IN GENERAL

Sec. 118-1. Purpose of Environmental Performance Standards.

It is the purpose of this chapter to provide for the conservation and protection of the environmental resources of the Florida Keys by ensuring that the functional integrity of natural areas is protected when land is developed.

Sec. 118-2. Existing Conditions Report.

As part of an application for approval on lands containing wetlands or upland native vegetation communities, the applicant shall prepare and submit an existing conditions report, including a survey that identifies the distribution and quality of native habitats and any endangered/threatened or protected species that are known to utilize the available habitats on the site and/or are observed within the parcel or lot proposed to be developed in accordance with the standards of this chapter. The existing conditions report shall be prepared by a biologist qualified under Section 102-25 in a form approved by the Planning Director and contain, at a minimum, the following:

(a) *Cover page.* The cover page shall contain the following:

(1) Legal description of parcel, including the real estate number;
(2) Property owner's name and address;
(3) Date of report and site visits;
(4) Affidavit from the property owner authorizing Monroe County staff to access the property for purposes of verifying the information contained in the Existing Conditions Report;
(5) Consultant's name, agency and contact information; and
(6) Consultant's signature.

(b) *Summary.* A general description of the site, including discussion of habitat type(s), important features, and presence and location of any disturbed areas.

(c) *Plant species list.* A list of species found in the survey, and those proposed for removal (if applicable), provided in a matrix of the following five columns:

(1) Common Name;
(2) Scientific Name;
(3) Status - Indicate species’ status as TH: Threatened; END: Endangered; RI: Regionally Important; SSC: Species of Special Concern; N: Non-listed Native; EX: Exotic; INV: Invasive Exotic; or other status;
(4) Number and Size

a. For those species listed as TH/END/RI/SSC, indicate the number of plants on the site and their sizes;
b. For those species named in this Section as reaching reproductive maturity at less than four (4) inches in diameter at breast height (DBH), estimate the total number of plants on the site regardless of size;
c. For all native species, estimate the total number of plants on the site, and the number with a DBH of 4 inches or greater.

(5) Number and Size to Be Removed (if applicable)
a. For those species listed as TH/END/RI, indicate the number of plants to be removed and the size of each plant;
b. For those species named in this Section as reaching reproductive maturity at less than four (4) inches in DBH, indicate the total number of plants to be removed regardless of size;
c. For all native species, indicate the number of plants to be removed with a DBH of four (4) inches or greater.

Common Native Species Reaching Reproductive Maturity at Less Than Four (4) inches DBH	
Beautyberry	*Callicarpa americana*
Cockspur	*Pisonia aculeata*
Cocoplum	*Chrysobalanus icaco*
Dahoon holly	*Ilex cassine*
False willow	*Baccharis angustifolia*
Green buttonwood	*Conocarpus erectus*
Jamaica caper	*Capparis cynophallophora*
Limber caper	*Capparis flexuosa*
Marlberry	*Ardisia escallonioides*
Myrsine	*Myrsine floridana (cubana)*
Randia	*Randia aculeata*
Saltbush	*Baccharis halimifolia*
Saw palmetto	*Serenoa repens*
Silver buttonwood	*Conocarpus erectus var. sericeus*
Snowberry	*Chiococca alba*
Snowberry	*Chiococca pinetorum*
Spanish stopper	*Eugenia foetida*
Tallowood	*Ximenia americana*
Wax myrtle	*Myrica cerifera*
White stopper	*Eugenia axillaris*
Wild coffee	*Psychotria nervosa*

(d) *Animal species list.* A list of the endangered, threatened, or otherwise protected animal species observed during the site survey. This Section shall also include a list of protected species that may not have been actually observed, but may use the site for foraging, roosting, breeding, or nesting. In addition, if the proposed development is within the Species Focus Area for the Key Largo cotton mouse, the Key Largo woodrat, the silver rice rat, or the Stock Island tree snail, surveys for these species may be required in accordance with Chapter 122-8.

(e) *Site plan.* A site plan at a scale of one inch equals 20 feet or greater showing the location of the following:

(1) all listed threatened and endangered native plant species; species of special concern; and regionally important native plant species;
(2) all native plant species that reach reproductive maturity at less than four inches DBH, as named in this Section;
(3) all other native plant species with a DBH of four inches or greater;
(4) the extent of wetlands;
(5) areas of disturbance and exotic species; and
(6) proposed boundary of area(s) to be cleared and location of species to be removed (if applicable), including, but not limited to, building footprint, construction impact zone as defined in Section 101-1, installation of buried utilities, driveways and walkways.

Sec. 118-3. Administration and Compliance.

Before a certificate of occupancy or final inspection approval may be issued for any structure, portion, or phase of a project subject to this chapter, a grant of conservation easement running in favor of the County shall be approved by the Planning Director and the County Attorney and recorded in the official public records of the County for any conservation easement required pursuant to Sections 118-9, 118-10(d)(7), 118-12(b)(4)b, and 118-12(c)(2), or elsewhere in this chapter. The conservation easement shall state the amount of required upland native vegetation open space and prohibit activities within that open space, including removal, trimming or pruning of native vegetation; acts detrimental to wildlife or wildlife habitat preservation; excavation, dredging, removal or manipulation of the substrate; activities detrimental to drainage, flood control, or water or soil conservation; dumping or placing soil, trash, or other materials; and any other restrictions as may be stated on the conservation easement. Fencing shall not be allowed in a conservation easement unless the fencing abuts developed land and contributes to the protection of the conservation area.

Sec. 118-4. Wetland Open Space Requirements.

No development activities, except as provided for in this chapter, are permitted in submerged lands, mangroves, salt ponds, freshwater wetlands, freshwater ponds, or in undisturbed salt marsh and buttonwood wetlands; the open space requirement is 100 percent.

Allocated density (dwelling units per acre) shall be assigned to freshwater wetlands and undisturbed salt marsh and buttonwood wetlands only for use as transferable development rights away from these habitats. Submerged lands, salt ponds, freshwater ponds and mangroves shall not be assigned any density or intensity.

Sec. 118-5. Habitat Analysis for Palm Hammocks.

If a hammock has an abundance and density of thatch palms such that 20 percent of the dominant canopy plants are palms, the hammock shall be considered a palm hammock.

Sec. 118-6. Environmental Design Criteria.

No land shall be developed, used or occupied except in accordance with the criteria in this chapter unless the County Biologist recommends an authorized deviation in order to better serve the goals, objectives and policies of the Comprehensive Plan and the Planning Director or Planning Commission approves the recommendation as a minor or major conditional use subject to the standards and procedures set forth in Chapter 110, Article III. No recommendation for an authorized deviation from these environmental design criteria shall be made unless the County Biologist makes written findings of fact and conclusions of biological opinion that substantiate the need and/or benefits to be derived from the authorized deviation.

Sec. 118-7. General Environmental Design Criteria.

No land shall be developed except in accordance with the following general criteria:

(a) Development shall not disturb the following vegetation:

(1) champion trees (listed nationally or in the State of Florida);
(2) native specimen trees (diameter at breast height that is greater than seventy-five percent [75%] of the record tree of the same species for the State of Florida); and
(3) plant species listed by the USFWS as threatened or endangered.

(b) To the maximum extent practicable, development shall be sited so as to preserve all listed threatened and endangered native plant species; species of special concern; and regionally important native plant species. In those instances where an applicant can demonstrate that avoidance of such species is not possible by clustering or by an alternate design approach, then the applicant shall make a payment into the Monroe County Land Management and Restoration Fund in accordance with Section 118-8.

(c) The habitat of protected plants and animals (including but not limited to species listed as endangered, threatened, species of special concern, or protected under laws such as the Migratory Bird Treaty Act) shall be preserved to the maximum extent practicable through the configuration of open space. Habitat includes, but is not limited to, foraging, roosting, breeding, and natural and artificial nesting habitat. This includes, but is not limited to, bird

rookeries and bird nesting colonies. No habitat of protected species shall be disturbed without prior notification and approval by the County Biologist. Impacts to endangered species habitat that result in a "May Affect" determination through the application of the U.S. Fish and Wildlife Service (USFWS) Species Assessment Guides will require coordination with the USFWS in accordance with Chapter 122-8.

(d) All areas of disturbance shall be managed to avoid the introduction and/or establishment of invasive exotic plant species as defined in Section 101-1.

(e) All invasive exotic plant species shall be removed from the parcel proposed for development.

(f) It is the purpose of this subsection to minimize the environmental impacts of development by requiring design of a development on a parcel of land to incorporate clustering of the development away from the natural areas on the parcel that are the most susceptible to harmful impacts of development. Clustering requirements shall apply to all development, including plat design, and shall be achieved in the following manner:

(1) When a parcel proposed for development contains more than one habitat type, all development shall be clustered on the least sensitive portions of the parcel. For the purpose of this subsection, the relative sensitivity of separate habitat types shall be as listed below with subsection (f)(1)a. of this Section being the most sensitive and subsection (f)(1)j. of this Section being the least sensitive.

a. Cactus hammock;
b. Palm hammock;
c. Beach/berm;
d. Pinelands;
e. Hammock;
f. Disturbed beach/berm;
g. Disturbed with slash pines;
h. Disturbed with hammock;
i. Disturbed; and
j. Disturbed with exotics.

(2) Development within the least sensitive habitat shall achieve the maximum density or intensity allowable by Chapter 130, and shall fully use the net buildable area of the habitat prior to expanding to the next least sensitive habitat type on the site. For proposed plats, these clustering requirements shall be applied such that the number of proposed lots are sized and configured to achieve the highest allowable density within the least sensitive habitat prior to locating additional lots within the next least sensitive habitat. For disturbed habitats only, development or proposed plats shall use 100 percent of the disturbed habitat, except for the area of any required setbacks, before expanding to the next least sensitive habitat type.

(3) In addition to the requirements of subsections (f)(1) and (f)(2) of this Section, development shall be clustered within the least ecologically valuable area of each habitat as determined by the County Biologist.

(4) All development shall be clustered in a manner that reduces habitat fragmentation and preserves the largest possible area of contiguous, undisturbed habitat. The Planning Director may vary the clustering requirements described above in order to reduce habitat fragmentation.

(g) The Planning Director, in consultation with the County Biologist, may approve an application that modifies or waives the minimum yard requirements set out in this Land Development Code in order to preserve champion and specimen trees or the habitat of protected species.

Sec. 118-8. Mitigation Standards and County Environmental Land Management and Restoration Fund.

(a) *Mitigation standards.* Unless alternative mitigation is approved as part of a minor or major conditional use pursuant to Section 118-6, the removal of any listed threatened or endangered native plant species; any regionally important native plant species; any native plant species that reaches reproductive maturity at less than four (4) inches DBH as identified in Section 118-2(c); and any other native plant species with a diameter at breast height DBH of four inches or greater shall require payment to the Monroe County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a 2:1 basis, as determined in accordance with subsection (b). The number, species, and sizes of trees and plants to be mitigated shall be identified in the existing conditions report provided pursuant to Section 118-2 and approved by the County Biologist.

(b) *Mitigation fees determination.* The mitigation fee shall be based on the replacement cost of the specific plants and trees. The costs for replacement plants and trees shall be based upon a price schedule maintained by the County Biologist. This schedule shall be based on price quotes by at least three private plant nurseries within the County or Miami-Dade County.

(c) *County environmental land management and restoration fund.* Mitigation fees shall be paid into the Monroe County Environmental Land Management and Restoration Fund. Revenues and fees deposited in this fund shall be used for restoration and management activities of public resource protection and conservation lands, as specifically detailed by resolution of the BOCC.

Sec. 118-9. Clearing Allowances.

(a) *Purpose.* It is the purpose of this Section to provide for open space as a part of a development plan in order to ensure the continued existence of natural wildlife habitat and to provide open green areas for the movement, aesthetics, and safety of the human population utilizing the development. Native plant communities shall be considered required open space areas and shall not be cleared or otherwise disturbed, beyond the limits specified in subsection (b), including ground cover, understory, midstory, and canopy vegetation. All such areas shall be maintained in their natural condition and shall be protected by a grant of conservation easement running in favor of the County.

(b) *Percentage of clearing.* Clearing of upland native vegetation communities in tiers I, II, III, and III-A shall be limited to the following percentages:

Tier	Permitted Clearing*
I	20 percent or 3,000 square feet, whichever is greater; but no greater than 7,500 square feet of upland native vegetation For parcels greater than 30,000 square feet, with the exception of parcels on Big Pine Key and No Name Key, clearing for one driveway of reasonable configuration up to 18 feet in width is permitted to provide reasonable access to the property for each parcel and shall be exempt from maximum clearing limit of 7,500 square feet. Clearing for a driveway shall be recommended by a County Biologist and approved by the Planning Director. The proposed driveway design shall minimize fragmentation, avoid specimen trees, and take the shortest reasonable route. In no case shall clearing, including the driveway, exceed 20 percent of the entire site.
II	40 percent or 3,000 square feet, whichever is greater; but no greater than 7,500 square feet of upland native vegetation (Big Pine Key and No Name Key only).
III	40 percent or 3,000 square feet, whichever is greater; but no greater than 7,500 square feet of upland native vegetation. For parcels greater than 30,000 square feet, with the exception of parcels on Big Pine Key and No Name Key, clearing for one driveway of reasonable configuration up to 18 feet in width is permitted to provide reasonable access to the property for each parcel and shall be exempt from maximum clearing limit of 7,500 square feet. Clearing for a driveway shall be recommended by a County Biologist and approved by the Planning Director. The proposed driveway design shall minimize fragmentation, avoid specimen trees, and take the shortest reasonable route. In no case shall clearing, including the driveway, exceed 40 percent of the entire site.

III-A Special Protection Area	40 percent or 3,000 square feet, whichever is greater; but no greater than7,500 square feet of upland native vegetation. For parcels greater than 30,000 square feet, with the exception of parcels on Big Pine Key and No Name Key, clearing for one driveway of reasonable configuration up to 18 feet in width is permitted to provide reasonable access to the property for each parcel and shall be exempt from maximum clearing limit of 7,500 square feet. Clearing for a driveway shall be recommended by a county biologist and approved by the Planning Director. The proposed driveway design shall minimize fragmentation; avoid specimen trees; and take the shortest reasonable route. In no case shall clearing, including the driveway, exceed 40 percent of the entire site.
*Clearing for palm or cactus hammock is limited to only ten percent and the maximum amount of clearing shall be no more than 3,000 square feet.	

(c) *Baseline conditions.* The legal conditions of land existing as of February 28, 1986, and as depicted on the December 1985 Habitat Classification Aerial Photographs, shall be used as a baseline to determine the clearing that may be permitted on a site. The 1985 maps shall be supplemented by recent aerial photography and existing site analysis to determine any increases in the amount of upland native vegetated areas. Upland native vegetated areas cleared between 1986 and the time of permit application shall be considered to still include upland native vegetation for purposes of determining the amount of open space and clearing permitted.

(d) *Ocean Reef Club clearing.* For the purpose of this Section, upland native vegetated areas in the Ocean Reef Club shall be limited to clearing of 40 percent of the upland native vegetated areas.

(e) *Big Pine Key and No Name Key clearing.* Clearing of native habitat on Big Pine Key and No Name Key will be limited to parcels to be developed for residential use or for local road widening. The total amount of clearing over the 20-year life of the Habitat Conservation Plan (2003-2023) will be limited to no more than seven (7) acres. No clearing of native habitat, other than that necessary and authorized for new residential development, local road widening, or fire breaks to protect residential areas will be allowed.

(f) *Lot aggregation and clearing.* For ROGO applications that receive points for lot aggregation under Section 138-28(4), permitted clearing of vegetation on the combined parcels shall be limited to the percentage of the property indicated in subsection (b) of this Section or a total of 7,500 square feet, whichever is less.

(g) *Vesting provisions.* Applications for building permits received prior to January 13, 2013, and any building permits issued or to be issued pursuant to an active conditional use permit

development order approved prior to January 13, 2013, shall be permitted to use the clearing allowances in effect at the time of building permit application or approved in the conditional use permit. Any revisions to the extent of clearing approved by the building permits or conditional use permits referenced above shall be required to comply with the clearing limits currently in effect.

Sec. 118-10. Environmental Design for Specific Habitat Types.

In addition to the general criteria set forth in this chapter, specific criteria shall apply to individual habitats as outlined in this Section.

(a) *Hammock.* All structures developed, used or occupied on land classified as hammock (all types and all levels of quality) shall be designed, located and constructed such that:

(1) All areas of required open space are maintained in their natural condition, including the preservation of canopy, midstory, understory vegetation, ground cover and leaf litter layer; and
(2) Clearing of native vegetation is limited to the area of approved clearing shown on the approved site plan, which shall include a construction impact zone around all structures. Construction barriers shall be required at the outer edge of the construction impact zone and shall be visible and of durable material such as wood, fabric, wire fencing, plastic safety fencing, or similar types that provide openings to allow the passage of wind and water through them. Barriers shall be staked and remain in place and maintained in a functional condition until final inspection for a certificate of occupancy has been approved. During construction, there shall be no disturbances of the ground surface and vegetation within required open space areas.

(b) *Pinelands.* All structures developed, used or occupied on land classified as pinelands (all types and all levels of quality) shall be designed, located and constructed such that:

(1) All areas of required open space are maintained in their natural condition, including canopy, midstory, understory vegetation, and ground cover. Dead vegetative matter, including leaf litter layer, may be removed for fire safety; and
(2) All structures are separated from the body of the pinelands by a clear, unvegetated fire break of at least 15 feet width. Any clearing required to create this firebreak shall be deducted from the total area of clearing allowed for the parcel. Clearing of native vegetation shall be limited to the area of approved clearing shown on the approved site plan, and the required firebreak. Construction barriers shall be required at the outer edge of the area to be cleared and shall be visible and of durable material such as wood, fabric, wire fencing, plastic safety fencing, or similar types, that provide openings to allow the passage of wind and water through them. Barriers shall be staked and remain in place and maintained in a functional condition until final inspection for a certificate of occupancy has been approved. During construction,

there shall be no disturbances of the ground surface and vegetation within required open space areas.

(c) *Beach berm complex or disturbed with beach berm.* All structures developed, used or occupied on land classified as a beach berm complex or as disturbed with beach berm shall be designed, located and constructed such that:

(1) All structures are elevated on pilings or other supports.
(2) No beach berm material is excavated or removed and no fill is deposited on a beach berm except as needed for shoreline stabilization or beach renourishment projects with a valid public purpose that furthers the goals of the Monroe County Comprehensive Plan, as determined by the Planning Director. If applicable, all such projects shall require approval by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers prior to the commencement of development or construction and/or prior to the issuance of a County 'Notice to Proceed.'
(3) The clearing of beach berm vegetation is limited to the minimum clearing required to allow development of a permitted use. Beach berm areas disturbed during construction shall be immediately restored to stable condition pursuant to a restoration plan approved by the County Biologist. Restoration techniques shall be designed to achieve the maximum stability possible. Native plants shall be used exclusively in re-vegetation.
(4) A construction impact zone is provided and construction barriers are required at the outer edge of the construction impact zone and shall be visible and of durable material such as wood, rope or wire cable. No fencing or other material that can entrap wildlife may be used as a construction barrier on a beach berm. No vehicular or pedestrian traffic shall be permitted outside of the construction barriers for the duration of the construction period. Barriers shall remain in place and maintained in a functional condition until final inspection for a certificate of occupancy has been approved.

(d) *Mangroves, wetlands, and submerged lands.* All structures developed, used or occupied on land classified as mangroves, wetlands or submerged lands (all types and all levels of quality) shall be designed, located and constructed such that:

(1) *Generally.* Only docks and docking facilities, boat ramps, walkways, water access walkways, water observation platforms, boat shelters, nonenclosed gazebos, riprap, seawalls, bulkheads, and utility pilings shall be permitted on or over mangroves, wetlands, and submerged lands, subject to the specific restrictions of this subsection. Trimming and/or removal of mangroves shall meet Florida Department of Environmental Protection requirements.
(2) *Protection of circulation patterns.* Shoreline structures shall be designed to protect tidal flushing and circulation patterns.
(3) *Dredging.* The following restrictions shall apply to dredging activities:

a. No new dredging shall be allowed in the County except as specified for boat ramps in Section 118-12(l) (shoreline setback, boat ramps).
b. No maintenance dredging shall be permitted within areas vegetated with seagrass beds or characterized by hard bottom communities except for maintenance dredging in public navigation channels.
c. In order to facilitate establishment and prevent degradation of bottom vegetation, maintenance dredging in artificial waterways shall not exceed depths greater than six feet at mean low water (MLW). This restriction does not apply to the entrance channels into Key West Harbor and Safe Harbor.
d. All dredged spoil materials shall be placed on permitted upland sites designed and located to prevent runoff of spoil material into wetlands or surface waters.
e. All such projects shall require approval by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers prior to the commencement of development or construction and/or prior to the issuance of a County 'Notice to Proceed.'
f. Exemptions:

1. Pursuant to Policy 202.8.6, canal restoration projects developed to determine the effectiveness of water quality strategies of the Florida Keys National Marine Sanctuary Water Quality Protection Program that meet the following criteria are exempt from the restrictions in 118-10(d)(3)b:

   i. Projects are limited to previously dredged artificial canals characterized as having poor or fair water quality within the 2013 Monroe County Canal Management Master Plan.
   ii. Projects are performed or funded by public entities (county, state, or federal) for organic material removal; and
   iii. Projects are backfilled to a depth of six to eight feet (6ft - 8ft), or an alternative depth as determined by best available scientific data and authorized by the state and federal permitting agencies; and
   iv. Hydraulic (vacuum) dredging shall be considered the preferred means of removal of the organic material. If hydraulic dredging is not proposed to accomplish the organic material removal, a public hearing before the Board of County Commissioners (BOCC) shall be required prior to issuance of a County permit.

2. Pursuant to Policy 202.8.6, two (2) demonstration pilot canal restoration projects to remove decomposing organic material from previously dredged artificial canals (down to the bedrock) without backfilling will be performed and evaluated for effectiveness. Water quality monitoring of these two (2) organic removal pilot projects shall be conducted at a two- (2) year point of time and a ten- (10) year point of time after completion of the pilot projects, and a water quality report shall be reviewed to determine the effectiveness in improving dissolved oxygen concentrations,

as identified in the surface water quality criteria in Ch. 62-302.530, F.A.C., in the two (2) organic removal pilot projects canals.

(4) *Placement of fill.* No fill shall be permitted in any mangroves, wetlands, or submerged lands except:

a. As specifically allowed by this Section or by Section 118-12(k) (Bulkheads, Seawalls, Riprap) and 118-12(l) (Boat Ramps);
b. To fill a manmade, excavated water body such as a canal, boat ramp, boat slip, boat basin or swimming pool if the County Biologist determines that such filling will not have a significant adverse impact on marine or wetland communities;
c. As needed for shoreline stabilization or beach renourishment projects with a valid public purpose that furthers the goals of the Monroe County Comprehensive Plan, as determined by the County Biologist;
d. For bridges extending over salt marsh and/or buttonwood association wetlands that are required to provide automobile or pedestrian access to lawfully established dwelling units located on upland areas within the same property for which there is no alternate means of access. Such bridges shall be elevated on pilings so that the natural movement of water, including volume, rate and direction of flow shall not be disrupted or altered; or
e. As approved for Disturbed Salt Marsh and Buttonwood Association Wetlands with appropriate mitigation as defined by the wetland regulations of subsection (e)(6) of this Section.

(5) *After-the-fact exclusion.* No after-the-fact permits shall be issued that violate the County dredge and filling regulations. All fill shall be removed and all damages mitigated.

(6) *Development in disturbed wetlands.* Lands classified as disturbed with salt marsh and buttonwood association may be filled for development in accordance with the following criteria:

a. Disturbed wetlands proposed for filling will be evaluated by a County Biologist using the Keys Wetlands Evaluation Procedure (KEYWEP) and assigned a KEYWEP score. The County Biologist may conduct a current KEYWEP analysis to confirm or update a parcel's KEYWEP scores.

1. Wetland quality categories based on KEYWEP scoring:

i. High functional capacity wetlands: those wetlands that score higher than 5.5, regardless of previous disturbance. Development is prohibited under any circumstances.

ii. Moderate functional capacity wetlands: those wetlands that score 5.5 or less, but greater than or equal to 4.6. These wetlands are suitable for development with appropriate mitigation.

iii. Low functional capacity wetlands: those wetlands that score less than 4.6 or are assigned a green-flag designation as suitable for development. These wetlands are suitable for development with appropriate mitigation.

2. Wetlands determined by KEYWEP to have a high functional capacity (those wetlands that score above 5.5 or those wetlands that are assigned a red flag) are not suitable for filling. The open space ratio for such wetlands will be 1.0 (100%).

3. Wetlands determined by KEYWEP to have moderate or low functional capacity (those wetlands that score 5.5 or less or are assigned a green flag) are suitable for filling with appropriate mitigation, as determined by the Florida Department of Environmental Protection (DEP) and the U.S. Army Corps of Engineers (ACOE). All such projects shall require documentation that all aspects of DEP and ACOE mitigation have been satisfied prior to the commencement of construction and/or prior to the issuance of a County 'Notice to Proceed.'

b. Placement of fill within disturbed wetlands is subject to the environmental design clustering criteria (see Section 118-7(f)). Less sensitive habitats on the subject parcel must be developed before disturbed wetlands are filled.

c. Any portion of a wetland filled under these provisions shall be considered disturbed habitat with a required open space ratio of 0.20. In the event that state and/or federal permits restrict fill to the development area only, this provision will not apply.

d. Any development within a wetland so filled shall conform to the setbacks established by the DEP and the ACOE permits, and to the minimum yards required by Chapter 131 of this LDC.

(7) *Vegetated buffer required between development and wetlands.* Except as allowed in Section 118-7 (general environmental design criteria), a minimum vegetated setback of 50 feet shall be maintained as an open space buffer and shall be protected by a grant of conservation easement running in favor of the County for development occurring adjacent to all types of wetlands, with the following exceptions:

a. If a 50-foot setback results in less than 2,000 square feet of principal structure footprint of reasonable configuration, then the setback may be reduced to allow

for 2,000 square feet of principal structure footprint of reasonable configuration, provided that the setback is not reduced to less than 25 feet.

b. On properties classified as scarified adjacent to wetlands, the wetland setback may be reduced to 25 feet, without regard to buildable area, if the entire setback area:

1. Is planted and maintained in native vegetation meeting the standards of a class D bufferyard or a bufferyard providing similar protection (Section 114-128 Bufferyard standards) with the exception that understory trees may be substituted for canopy trees;
2. Contains a site-suitable stormwater management plan approved by the County Biologist; and
3. Is placed under a conservation easement.

c. The wetland setback required by this subsection shall not apply to mangrove or wetland fringes occurring along manmade canals, channels, or basins.

d. The wetland setback required by this Section shall not apply to areas filled in accordance with 118-10(d)(6) where state and/or federal permits restrict the fill to the development area only.

e. On properties where the wetland is located between the development and water (shoreline), the terms of the grant of conservation easement may be amended to allow up to a four-foot wide (4ft) boardwalk or similar water-access structure to allow access to the water. The terms may only be amended if the County Biologist makes written findings of fact and conclusions of biological opinion that substantiate the need and/or benefits to be derived from the amendment.

Sec. 118-11. Environmental Restoration Standards.

(a) In the event any land clearing is occurring on a site and such clearing is outside the scope of any permit issued or for which no permit was issued, the Building Official or other authorized County official shall issue a stop work order. If any land clearing has occurred for which no permit has been issued or which is beyond the scope of an issued permit, such activity shall be subject to code enforcement proceedings under Chapter 8. Except for issuance of an approved after-the-fact permit for restoration, the stop work order shall remain in effect and no application for a building permit shall be processed or issued for the site until the violation for unlawful land clearing is corrected pursuant to subsection (b) of this Section.

(b) A land clearing violation is corrected if all of the following conditions are met in accordance with a restoration site plan approved by the County Biologist:

(1) The site shall be restored to its pre-violation grade.

(2) All native trees, shrubs, and groundcovers on the unlawfully cleared site shall be replaced with native plant species as appropriate to the site unlawfully cleared. The

trees shall be of a size and maturity commensurate to the unlawful clearing as determined by the County Biologist. The native species mix shall consist of the approximate percentages of the predominant tree, shrub and groundcover species on the site unlawfully cleared prior to the violation, but if any endangered or threatened tree, shrub or groundcover species were unlawfully cleared, then those species shall be replaced with plants of a size and maturity commensurate to and related to the unlawful clearing as determined by the County Biologist regardless of predominance.

(3) All replanted trees, shrubs, and groundcovers shall be located on site within the same areas that were unlawfully cleared.

(4) A monetary guarantee for the restoration work, as stipulated in subsection (e) of this Section, shall be provided in the form of a surety bond, cash, or other financial guarantee in a form acceptable to the Planning Director and the County Attorney.

(5) The restoration work to correct the land clearing violation in accordance with subsections (b)(1)-(3) of this Section shall be required to receive final inspection approval by the County Biologist.

(c) Any violation for land clearing that has been corrected pursuant to subsection (b) of this section shall be subject to the following additional conditions to ensure the growth and viability of the restored habitat:

(1) Except as expressively authorized by the County Biologist pursuant to an approved phased restoration site plan, all invasive exotic plant species shall be removed at least quarterly during the three-year period described in subsection (c)(2) of this section.

(2) At least 80 percent of the trees replaced, as described in subsection (b)(2) of this Section, shall be viable at the end of a three-year period from the date of the final inspection of the restoration work. Dead or dying trees may be replaced, subject to prior approval by the County Biologist, during the three-year period in order to ensure the 80 percent minimum is met at the end of three years. The restoration work shall be inspected by the County Biologist on an annual basis during the three-year period and shall require a final inspection at the end of the three-year period. The County Biologist may direct that dead or dying trees be replaced as he or she deems necessary to ensure the 80 percent standard will be met at the end of the three years.

(d) Failure to meet the conditions of subsection (c) of this Section shall be considered a violation of this Land Development Code and subject to code enforcement proceedings under chapter 8.

(e) The permit holder shall be required through a financial guarantee approved by the Planning Director and the County Attorney, to guarantee the satisfactory completion of the restoration work in accordance with the approved restoration site plan and the survival of at least 80 percent of the replanted trees for a period of at least three years after the issuance of the after-the-fact permit for the restoration work.

(1) *Guarantee amount.* The amount of the restoration guarantee shall cover the full costs of the restoration work described in subsections (b)(1)-(3) of this Section. The estimated costs of the restoration described in subsection (b) of this Section shall be the sum of subsections (e)(1)a. and (e)(1)b. of this Section:

a. One-hundred percent of the estimated cost of the restoration described in subsection (b)(1) of this Section as estimated by the County Engineer; or alternatively, 150 percent of the price of a binding contract for the restoration work required by subsection (b)(1) of this Section, entered into with a contractor qualified to perform such work.

b. One-hundred percent of the estimated cost, as estimated by the Building Official, of performing the restoration work described in subsections (b)(2) and (b)(3) of this Section; or, alternatively, 150 percent of the price of a binding contract for the restoration work described in subsections (b)(2) and (3) of this Section, entered into with a state licensed landscape architect.

(2) *Form of Guarantee*. The guarantee shall be in a form approved by the Planning Director and the County Attorney. The guarantee shall be payable to the county in the amount of the estimated total cost for restoration work as calculated in subsection (e)(1) of this Section, and enforceable, on or beyond a date 36 months from the date of the permit issued for the restoration work. Release of any guarantee shall be conditioned upon final approval by the County Biologist of the restoration work as stipulated in subsection (c)(2) of this Section.

(3) *Default.* All guarantees shall provide that if the permit holder failed to complete required restoration work in accordance with the restoration site plan and failed to comply with the requirements of subsection (c)(2) of this Section, the Planning Director in consultation with the County Attorney, may take the following action: inform the guarantee company in writing of default by the permit holder and request that it take necessary actions to complete the required improvements.

Sec. 118-12. Shoreline Setback.

(a) *Purpose.* The purpose of this Section is to allow for reasonable access between the land and water, provide secure boat storage, ensure good water quality, provide an appearance consistent with community character, protect structures from the effects of long-term sea level rise, protect beaches and shores from erosion, protect over-water views, avoid adverse impacts on navigation, and protect marine and terrestrial natural resources.

(b) *Principal structures.* Principal structures shall be set back as follows:

(1) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins, principal structures shall be set back at least 20 feet as measured from the mean high water (MHW) line, except as allowed in subsections (b)(2) and (b)(3) of this Section.

(2) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins, where the 20-foot setback from an existing cut-in slip or boat ramp would result in less than 2,000 square feet of principal structure footprint of reasonable configuration, the setback from the existing cut-in slip or boat ramp may be reduced to allow for 2,000 square feet of principal structure footprint of reasonable configuration, provided that the setback is not reduced to less than ten (10) feet from the MHW line of the slip or ramp.

(3) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins that, are developed with a lawfully established principal use, principal structures on parcels less than 4,000 square feet may encroach a maximum of ten (10) feet into the required 20-foot shoreline setback, provided that:

a. The total combined area of all structures, principal and accessory, does not occupy more than 60 percent of the upland area of the required 20-foot shoreline setback;
b. The proposed development protects the character and over-water views of the community;
c. Shoreline vegetation is protected;
d. Open space ratios are maintained; and
e. Stormwater runoff from the entire site is managed on-site using best management practices utilizing berms and infiltrating runoff.

(4) Along open water shorelines not adjacent to manmade canals, channels, or basins, and which have been altered by the legal placement of fill:

a. And where a mangrove fringe of at least ten feet in width occurs across the entire shoreline of the property, principal structures shall be set back at least 30 feet as measured from the MHW line or the landward extent of the mangroves, whichever is farther inland.
b. And where no mangrove fringe of at least ten feet in width exists, principal structures shall be set back at least 30 feet from the MHW line, provided that native vegetation exists or is planted and maintained in a ten-foot width across the entire shoreline as approved by the County Biologist, and is placed under a grant of conservation easement running in favor of the County; otherwise the setback shall be 50 feet as measured from the MHW line.
c. On infill lots surrounded by significant development where principal structures are set back less than 50 feet from mean high water (MHW) or the landward extent of mangroves, the Planning and Environmental Resources Director may evaluate the community character, the presence or absence of environmental features, and the setbacks on adjacent developed properties within two parcels on either side of proposed development, and may allow principal structures to be set back as far as practicable or in line with adjacent principal structures. In no event shall the setback be less than 20 feet. On shorelines where the existing pattern of setback is greater than 30 feet, the greater setback shall apply.

(5) Along unaltered and unlawfully altered shorelines located adjacent to natural nondredged waterways and open water, principal structures shall be set back 50 feet as measured from the MHW line or the landward extent of the mangroves, whichever is farther landward.

(c) *Accessory structures*. Accessory structures, as defined in Section 101-1, within the shoreline setback shall be constructed at a foundation height not to exceed 18 inches above existing grade and shall meet the following design criteria:

(1) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins:

a. In no event shall the total, combined area of all structures occupy more than 60 percent (60%) of the upland area of the required 20-foot shoreline setback.
b. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of ten (10) feet, as measured from the MHW line.

(2) Along open water shorelines not adjacent to manmade canals, channels, or basins, and which have been altered by the legal placement of fill, and where a mangrove fringe of at least ten (10) feet in width exists, or native vegetation exists or is planted and maintained in a ten-foot (10) width across the entire shoreline of the property and is placed under a grant of conservation easement running in favor of the County:

a. In no event shall the total combined area of all structures occupy more than 30 percent (30%) of the shoreline setback required for the principal structure.
b. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas, other than docks and erosion control structures shall be set back a minimum of 15 feet as measured from the MHW line or the landward extent of the mangroves, whichever is farther landward, and shall be located in upland areas.

(3) Along open water shorelines not adjacent to manmade canals, channels, or basins, and which have been altered by the legal placement of fill, and where no mangrove fringe exists, and no conservation easement of native shoreline vegetation exists pursuant to Section 118-12(b)(4)b.:

a. In no event shall the total combined area of all structures occupy more than 30 percent (30%) of the shoreline setback required for the principal structure.
b. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas, other than docks and erosion control structures, shall be set back at least half the distance of the setback required for the principal structure, or 15 feet, whichever is greater, as measured from the MHW line, and shall be located in upland areas.

(4) Along unaltered or unlawfully altered shorelines:

a. In no event shall the total combined area of all structures occupy more than 30 percent (30%) of the shoreline setback required for the principal structure.

b. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas, other than docks and erosion control structures, shall be set back a minimum of 25 feet, as measured from the MHW line or the landward extent of the mangroves, whichever is farther landward, and shall be located in upland areas.

(d) *Stormwater and pollutant runoff.* All structures shall be designed such that stormwater and pollutant runoff is contained on site, consistent with the stormwater management standards of this Land Development Code. Pools, spas, fish cleaning tables, and similar pollutant sources shall not discharge directly into surface waters. Structures should be made of permeable materials, whenever practical, to allow the infiltration of stormwater runoff.

(e) *Applicability of open space and bufferyard requirements.* All structures within the shoreline setback shall be located such that the open space ratios for the entire parcel and all scenic corridors and bufferyards are maintained.

(f) *Enclosed structures and gazebos.* No enclosed structures, other than a dock box of five feet or less in height, a screened gazebo, and a screen enclosure over a pool or spa, shall be allowed within the shoreline setback. Gazebos must be detached from any principal structure on the parcel. No decks or habitable spaces shall be constructed on the roof of any gazebo. Any gazebo within the shoreline setback shall not exceed 200 square feet in area and the highest portion of the roof shall be no more than 12 feet above grade. Screen enclosures over pools shall not exceed 12 feet in height.

(g) *Boat shelter criteria.* Non-enclosed boat shelters may be erected only over a cut-in boat slip, basin, or ramp and may not extend into the adjacent waterbody beyond the mouth of the cut-in area, nor extend over any mangroves, seagrasses or hardbottom communities. The roof and supporting members of a boat shelter may extend up to two feet (2ft) into the shoreline setback around the perimeter of a boat basin or boat ramp. No decks or habitable spaces shall be constructed on the roof of any boat shelter. The highest portion of the roof of any boat shelter shall be no more than 12 feet above grade.

(h) *Preservation of native vegetation.* Structures shall be located in existing cleared areas before encroaching into native vegetation. The remaining upland area of the shoreline setback shall be maintained as native vegetation or landscaped areas that allow the infiltration of stormwater runoff.

(i) *Applicability of side yard setbacks.* Side yard setbacks required pursuant to Chapter 131 shall be maintained for all structures in the shoreline setback except for docks, seawalls, fences, , and retaining walls. Pier docks and mooring facilities such as davits, elevator lifts,

floating boat lifts and floating vessel platforms shall be set back a minimum of five (5) feet from the side property lines (including the property line as extended into the water perpendicular to the shore), or as specified within Section 118-12(m) Docking Facilities, whichever is greater.

(j) *Tidal flushing and circulation.* Shoreline structures shall be designed to protect tidal flushing and circulation patterns. Any project that may produce changes in circulation patterns shall be approved only after sufficient hydrographic information is available to allow an accurate evaluation of the possible impacts of the project. Previously existing manmade alterations shall be evaluated so as to determine if more hydrological benefits will accrue through their removal as part of the project.

(k) *Bulkheads, seawalls, and riprap*. Bulkheads, seawalls or riprap shall be permitted, provided that:

(1) Bulkheads, seawalls and/or riprap may be allowed without a principal use where it is demonstrated that their purpose is necessary for erosion control. Any attachments to seawalls or bulkheads, such as davits, cleats, and platforms, or any other elements that constitute docking facilities shall not be allowed except as accessory to a principal use. Seawalls may have a cap of up to two feet in width without being considered a dock.

(2) Vertical type seawalls or bulkheads shall be permitted only to stabilize severely eroding shorelines and only on manmade canals, channels, or basins. Such seawalls or bulkheads shall be permitted only if native vegetation and/or riprap and filter cloth is not a feasible means to control erosion. No new seawalls, bulkheads, or other hardened vertical structures shall be permitted on open water.

(3) Existing, deteriorated seawalls and bulkheads on open water shorelines may be repaired and/or replaced and are exempt from the nonsubstantial improvements limitations except on known or potential sea turtle nesting beaches. Repairs and/or replacements must maintain the existing footprint to the maximum extent practicable.

(4) Whenever feasible, riprap, bulkheads and seawalls should be placed landward of any existing mangroves or wetland vegetation. Native upland, wetland, and aquatic biotic communities shall be preserved to the maximum extent possible.

(5) Wherever feasible, riprap shall be placed at the toe of solid seawalls to dissipate wave energy and provide substrate for marine organisms.

(6) No seawalls, bulkheads, riprap or other shoreline hardening structures shall be permitted on or waterward of any portion of any beach berm complex that is known to be or is potential nesting area for marine turtles as determined by the County Biologist, the state, and/or other appropriate agencies. Within known or potential nesting areas, the County Biologist may, in cooperation with the Florida Department of Environmental Protection, determine that specific segments of shorelines have been previously lawfully altered to such a degree that suitable nesting habitat for marine turtles is no longer present. In such cases, the County Biologist in cooperation with the Florida Department of Environmental Protection may recommend reasonable

measures to restore the nesting habitat. If such measures are not feasible, the setback requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

(7) Beach renourishment projects on open water may be approved only upon a determination by the County Biologist that the project has a valid public purpose that furthers the goals of the Monroe County Comprehensive Plan.

(8) All such projects shall require state and/or federal permits prior to the commencement of development or construction and prior to the issuance of a county 'Notice to Proceed.'

(l) *Boat ramps.* Boat ramps shall be permitted provided that:

(1) All boat ramps shall be located and designed so as not to create a setback nonconformity for existing structures from the new MHW line created by the boat ramp.

(2) All boat ramps shall be confined to shorelines of manmade canals, channels, and basins with little or no native vegetation.

(3) The width of boat ramps, including side slopes, shall be limited to 15 feet, except that ramps serving commercial uses, public uses, or more than three dwelling units may be 35 feet in width.

(4) All above-water ramp, side slope or wall structures shall be located landward of the original MHW line. This area shall be subtracted from the total area allowed for structures in the shoreline setback in Section 118-12(c).

(5) A maximum of two accessory docks, abutting either or both sides of the ramp, are allowed provided setback requirements are met. These docks may extend beyond MHW, but shall comply with all requirements of this Section and Section 118-10(d).

(6) Construction of a boat ramp shall not involve any filling of surface waters except for the minimum amount needed for the actual boat ramp surface, side slopes, walls or pilings for accessory docks. Walls may not exceed two feet in width.

(7) Dredging shall be limited to the minimum amount necessary to construct the boat ramp and may not exceed 100 cubic yards of total excavation above and below MHW. No dredging of submerged grass beds or hardbottom communities shall be allowed.

(8) All such projects shall require approval by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers prior to commencement of construction and/or issuance of a County 'Notice to Proceed.'

(m) *Docking facilities*. Docking facilities shall be permitted, provided that:

(1) *Permit*. All required permits from the Florida Department of Environmental Protection and Army Corps of Engineers shall be obtained prior to commencement of construction and/or issuance of a County permit or 'Notice to Proceed.'

(2) *Width*. Docks shall not exceed ten percent (10%) of the width of the waterbody as measured laterally across the waterbody from the point of mean low water (MLW) of

the proposed location of placement, prior to construction of any dock, to the opposing point of mean low water, prior to construction of any dock. The County Biologist shall use the best available data to determine the point of MLW prior to construction of docks. Along open water shorelines adjacent to manmade waterways where no breakwater, rip-rap, or structure(s) exists along the outside of the waterway, the opposing point of mean low water shall be measured as the edge of the lawfully dredged area.

(3) *Setback Requirements*. No vessel shall be moored or docked or otherwise secured to a mooring facility in such a way that the vessel extends beyond the side property lines (including the property line as extended into the water perpendicular to the shore).

a. Davits shall be set back from the side property lines (including the property line as extended into the water perpendicular to the shore) the same distance as the required principal structure setback on the property or five feet (5ft), whichever is greater, except that one (1) davit support may be located within five feet (5ft) of the property line provided the davit arm is designed to swing to the interior of the property.

b. Elevator lifts shall be set back a minimum of 7.5 feet from the side property lines (including the property line as extended into the water perpendicular to the shore), except that personal watercraft lifts with a maximum capacity of 1,500 pounds shall be set back a minimum of five (5) feet from the side property lines (including the property line as extended into the water perpendicular to the shore).

c. Floating boat lifts and vessel platforms shall be set back from the side property lines (including the property line as extended into the water perpendicular to the shore) a minimum of 10 feet, if installed laterally and a minimum of five (5) feet, if installed perpendicular to the shoreline, so as not to create a navigational hazard.

d. 4-post hoists/cradle lifts shall be permitted on parcels that are a minimum of 70 feet wide and are located on manmade waterways that are 60 feet wide or greater. 4-post hoists/cradle lifts shall be set back a minimum of 7.5 feet from the side property lines (including the property line as extended into the water perpendicular to the shore). 4-post hoists/cradle lifts shall also be permitted on parcels located on open water shorelines (not adjacent to manmade canals, channels, or basins).

(4) *Navigable portion*. No dock together with a moored vessel and/or lift structure shall preempt more than 25 percent of the navigable portion of a waterbody. As used in this section, navigable portion is measured laterally across the waterbody from the point of mean low water prior to construction of any dock, to the opposing point of mean low water, prior to construction of any dock. The County Biologist shall use the best available data to determine the point of mean low water prior to construction of docks. Along open water shorelines adjacent to manmade waterways where no breakwater, rip-rap, or structure(s) exists along the outside of the waterway, the

opposing point of mean low water shall be measured as the edge of the lawfully dredged area.

(5) *Adjacent parcel*. Notwithstanding the provisions of the definitions of "accessory use or accessory structure" and "adjacent parcel" in Section 101-1, docks or docking facilities may be constructed on adjacent parcels under the same ownership and within the same land use (zoning) district, provided that a legally established principal use and/or structure exists on one parcel. In the event that ownership of the adjacent parcel containing such an accessory dock is severed from the parcel containing the principal use/structure, the dock and any other improvements must be removed and the shoreline restored unless the new owner can also come into compliance with the adjacency requirements of this Section.

Utilities may be permitted for docks or docking facilities located on such adjacent parcels, however limited in the following manner:

a. The principal use served by the accessory dock or docking facility shall be a single-family residence or two-family residence (duplex).
b. Electrical service shall be limited to 30 amperes service with a maximum of two circuits. Electric service may be permitted for dock or docking facility use only and shall not be used to service appliances such as, but not limited to, bait boxes or freezers.
c. Water service shall be limited to a 5/8 inch meter with back-flow preventer which shall provide service to a single-hose bib located at the dock or docking facility.
d. Use of the dock or docking facility shall be restricted to occupants of the principal residential use. Use by any other persons or entities is expressly prohibited.
e. Parking of motorized vehicles or trailers is prohibited.
f. Storing of boats on a dry portion of the lot or parcel that is not considered part of a dock or docking facility is prohibited.
g. Outdoor storage is prohibited.
h. Live-aboard use of vessels stored at the dock or docking facility is prohibited.

(6) *Required conditions*. Any docking facility shall meet the following conditions:

a. Docking facilities that do not terminate over seagrass beds or hardbottom communities must have at least four feet (4ft) of water depth at MLW at the terminal end of the docking facility, and continuous access to open water. A benthic survey shall be submitted to document the presence or absence of seagrass beds and/or hardbottom communities;
b. A docking facility that extends across a full ten percent of the width of any body of water may terminate in water less than four feet at MLW if this water depth occurs within five horizontal feet of the terminal end of the docking facility

such that the centerline of an average vessel will rest in water of adequate depth, and continuous access to open water is available;

c. Docking facilities may be developed on the shoreline of lots in a subdivision that was approved before September 15, 1986, if the docking facility is located in a channel or canal that was dredged before September 15, 1986, and if there is a MLW depth of at least four feet at the terminal end of the docking facility. Such docks shall not exceed ten percent of the width of the channel or canal; and

d. Docking facilities that terminate over seagrass beds or hardbottom communities may only be permitted when the water depth at the terminal platform is at least four feet above the top of all seagrasses, corals, macro algae, sponges, or other sessile organisms at MLW and continuous access to open water of navigable depth is available. A benthic survey shall be submitted to document the presence or absence of seagrass beds and/or hardbottom communities. All such projects shall require approval by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers prior to commencement of construction or issuance of a County 'Notice to Proceed.'

(7) *Location of boat mooring on docking facilities.* Except as specified in Section 118-12(m)(6)b, moored vessels and mooring facilities attached to docking facilities shall not be located in less than four feet water depth at MLW. If a moored vessel and/or mooring facility attached to a docking facility is located over seagrass beds or hardbottom communities, it may only be permitted where the water depth is at least four feet above the top of all seagrasses, corals, macro algae, sponges, or other sessile organisms at MLW and continuous access to open water is available.

(8) *Navigation interference*. All docking facilities shall be constructed so as not to interfere with normal navigation or reasonable access to adjacent docks or moorings.

(9) *Primary dock design.* Where a mangrove fringe of at least ten (10) feet in width or wetland vegetation exists along the shoreline, a dock with a walkway perpendicular to the shoreline, such as a "T" or "L" dock (subject to the requirements of subsection (m)(14)), shall be the primary design permitted, unless an alternate design is authorized by state and federal permits.

(10) *Secure tie-down provisions*. All docks with boat lifts, davits or similar lifting mechanisms shall provide cleats, rings, or similar features that can be used to tie down the vessel when it is out of the water in order to stabilize the vessel during high winds.

(11) *Floating dock allowance*. Any docking portions extending over water of at least four feet at MLW may be supported by floats. Floating docks shall be subject to the length and width requirements of the applicable dock type (marginal, T-style or Pier).

(12) *Floating boat lifts and vessel platforms*. The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts are permitted provided that such structures:

a. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;
b. Are not for mooring vessels that remain in the water when not in use;
c. Do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in Section 253.141, Florida Statute;
d. Are set back from the side property lines (including the property line as extended into the water perpendicular to the shore) a minimum of 10 feet if installed laterally, and a minimum of five (5) feet if installed perpendicular to the shoreline, so as not to create a navigational hazard;
e. Are secured to a stationary docking facility and, together with the dock, do not exceed 25% of the navigable portion of a manmade waterbody as required by subsection (m)(4) of this Section;
f. Are located in at least four (4) feet water depth at MLW;
g. Are not located over benthic resources; and
h. Are not located in manatee zones.

(13) *Marginal docks.* On shorelines landward of a seawall, revetment or manmade canal or channel, a dock may run the entire length of the shoreline, parallel to the water's edge, provided that:

a. The landward edge of the dock is located entirely on the upland shoreline and no walkway is needed to provide access to the dock;
b. All portions of the dock that extend over submerged lands are cantilever beam or pile supported;
c. The dock is located so as to avoid or minimize covering or impacting wetland vegetation or a mangrove fringe of more than ten (10) feet in width;
d. No 4-post hoists/cradle lifts shall be permitted on marginal docks located on altered shorelines adjacent to manmade canals, channels, and basins, unless located in a cut-in slip, or on a lot having a minimum of 70 feet of shoreline and where such manmade canal, channel, or basin has a minimum width of 60 feet, as measured from MLW to MLW prior to construction.

(14) *T-style docks.* Any dock with a walkway perpendicular to the shoreline, such as a "T" or "L" dock, shall be designed as follows:

a. The portion of the dock parallel to the shoreline (whether floating or stationary) may run the entire shoreline length of the parcel and shall not exceed eight (8) feet in width or ten percent of the width of the waterbody as required in subsection (m)(2), whichever is less.

b. The dock and walkway shall be located so as to avoid or minimize covering wetland vegetation or mangroves.
c. The walkway connecting the dock to the shore shall not exceed four feet in width. One such walkway shall be allowed for every 100 feet of shoreline length or fraction thereof (for example, 75 feet of shoreline may have one walkway and 101 feet of shoreline may have two).
d. Where a mangrove fringe of more than ten (10) feet in width or wetland vegetation exists along the shoreline and a "T" or "L" style dock would extend over more than ten percent of the width of the waterbody, the County Biologist will coordinate with the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers to evaluate an alternative design. Such alternative design shall only have the minimum deviations from this subsection to address this unique situation. If a mangrove fringe of more than ten (10) feet in width will be removed, the dock shall not extend more than 20 feet along the shoreline. On shorelines exceeding 100 feet in length, one such dock shall be allowed for every 100 feet of shoreline.

(15) *Pier type docks*. Pier type docks shall be permitted provided that:

a. Such structures are oriented approximately perpendicular to the shoreline;
b. Such structures are located in an existing break in the mangroves or shoreline vegetation; however, if no such break exists, a walkway no more than four (4) feet in width, may be cut through the mangroves or shoreline vegetation;
c. Such structures are located such that no portion of the dock (including the terminal platform and mooring facilities) is less than five (5) feet from the side property lines as extended into the water perpendicular to the shore;
d. Such structures do not exceed four (4) feet in width, except for a terminal platform, as allowed by subsection (m)(15)f;
e. Such structures are no longer than twice the linear shoreline frontage of the parcel or 100 feet, whichever is less. For purposes of this subsection (m)(15)e., dock length shall be measured from MLW out to the waterward extension of the dock. A special exception may be granted by the Planning and Environmental Resources Director to allow the minimum relaxation of this length restriction as is necessary to provide the upland owner with access to adequate water depths specified for docking facilities. Such special exceptions shall only be granted based on a written determination that, among other criteria, the proposed dock will not be inconsistent with community character, will not interfere with public recreational uses in or on adjacent waters, and will pose no navigational or safety hazard. At least 30 calendar days prior to the issuance of a county permit issued under such a special exception, the Planning and Environmental Resources Director shall ensure that shoreline property owners within 300 feet of the subject parcel are notified by regular mail of the proposed special exception in order to allow an opportunity for appeal; and

f. If proposed, the terminal platform is no wider than eight (8) feet in one dimension and does not exceed a total of 160 square feet in area. The terminal platform may include stairways for swimming access, provided that all stairways are contained within the square footage allowed for the terminal platform. The terminal platform may include a non-enclosed gazebo that does not exceed 100 square feet in area and the highest portion of the roof shall be no more than 12 feet above the decking or terminal platform level.

(n) *Water access structures*. The following specific types of structures, or portions thereof, extending over mangroves, wetlands, or submerged lands, shall be permitted only on shorelines of water bodies other than manmade canals, channels, and basins. All required permits from the Florida Department of Environmental Protection and the Army Corps of Engineers shall be obtained prior to commencement of construction or issuance of a County 'Notice to Proceed.'

(1) *Water access walkways*. Water access walkways shall be permitted provided that such structures are:

a. Oriented approximately perpendicular to the shoreline;
b. Designed to terminate in water no deeper than twelve (12) inches at MLW or extend farther than ten feet from the waterward extent of mangroves;
c. Designed so that the decking is elevated at least two (2) feet above MHW, except for a ramp or stair section at the waterward end which must be limited to no more than ten (10) foot long;
d. Do not exceed four (4) feet in width and do not include a terminal platform or gazebo or roof structures;
e. Designated by signs of at least one square foot each to be placed on each side of the structure that states "No Mooring of Motorized Vessels Allowed"; and
f. Designed not to terminate over seagrasses or hardbottom communities.

(2) *Water observation platforms*. Water observations platforms shall be permitted provided that such structures are:

a. Oriented approximately perpendicular to the shoreline;
b. Designed to terminate in water no deeper than six (6) inches at MLW or begin the terminal platform no farther than ten (10) feet beyond the waterward extent of mangroves;
c. Designed so that the top of the decking, including the terminal platform, must be elevated at least five (5) feet above MHW, except for a ladder or steps that may be added for swimming access only in the absence of seagrasses or hardbottom communities;
d. Designed with a terminal platform that does not exceed 160 square feet, inclusive of any steps or ladder. The terminal platform may include a non-enclosed gazebo that does not exceed 100 square feet in area and the highest

portion of the roof shall be no more than 12 feet above the decking or terminal platform level; and

e. Shall be designed with handrails and designated by signs of at least one square foot each to be placed on each side of the structure that states "No Mooring of Motorized Vessels Allowed."

(o) *Special approvals*.

(1) For structures serving commercial uses, public uses, or more than three dwelling units, the Planning and Environmental Resources Director or the Planning Commission may approve deviations from the requirements of the subsection above as part of a minor or major conditional use permit. Such approval may include additional structures or uses, provided that such approval is consistent with any permitted uses, densities, and intensities of the land use (zoning) district, furthers the purposes of this Section, is consistent with the general standards applicable to all uses, and the proposed structures are located in a disturbed area of an altered shoreline. Such additional uses are limited to waterfront dining areas, pedestrian walkways, public monuments or statues, informational kiosks, fuel or septic facilities, and water-dependent marina uses. Any such development shall make adequate provision for a water quality monitoring program for a period of five (5) years after the completion of the development.

(2) For structures serving three or fewer dwelling units the Planning and Environmental Resources Director may approve designs that address unique circumstances such as odd shaped lots or shorelines, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the Planning Director's written concurrence with the applicant's written finding that the proposed design furthers the purpose of this Section and the goals of the Monroe County Comprehensive Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances. No such special approval will be available for after-the-fact permits submitted to remedy a code enforcement violation.

(3) Docks or docking facilities lawfully existing along the shoreline of manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, may be expanded or extended beyond the size limitations contained in this Section in order to reach the water depths specified for docking facilities. Any such modifications shall comply with each and every other requirement of this Section and Section 118-10(d).

(4) All principal structures lawfully existing within the shoreline setback along manmade canals, channels, or basins, on parcels less than 4,000 square feet, may be rebuilt in the same footprint, provided that there will be no expansion of the footprint within ten (10) feet of the MHW line and there will be no adverse impacts on stormwater runoff, navigation or turtle nesting habitat.

(5) In licensed RV parks adjacent to manmade canals, channels, or basins, road ready vehicles may be parked no closer than ten (10) feet from the MHW line, provided that:

a. No previously approved site plan has established shoreline setbacks greater than ten (10) feet from MHW for RV parking;
b. The total combined area of all structures, principal and accessory, does not occupy more than 60 percent of the upland area of the required 20-foot shoreline setback;
c. Shoreline vegetation is protected and any required district boundary bufferyards are provided;
d. Open space ratios are maintained; and
e. Stormwater runoff from the entire site is managed onsite using best management practices.

(p) *Requirements for marine turtle nesting areas*. Notwithstanding the provisions of subsection (o) of this Section, no development other than pile-supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within 50 feet of any portion of any beach berm complex that is known to be or is a potential nesting area for marine turtles. Beaches known to serve as nesting areas for marine turtles are those areas documented as such on the County's threatened and endangered species maps and any areas for which nesting or nesting attempts ("crawls") have been otherwise documented. Any development shall comply with Sections 12-114 through 12-120.

(1) The 50-foot setback shall be measured from either the landward toe of the most landward beach berm or from 50 feet landward of MHW, whichever is less. The maximum total setback shall be 100 feet from MHW.

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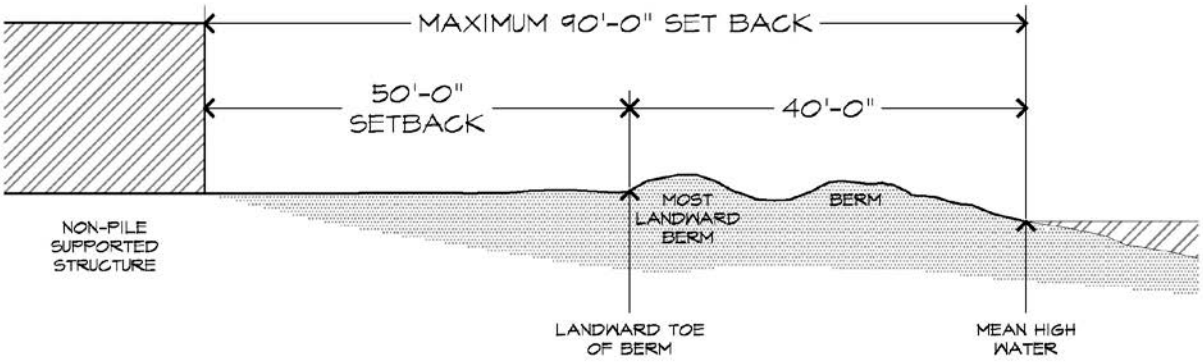
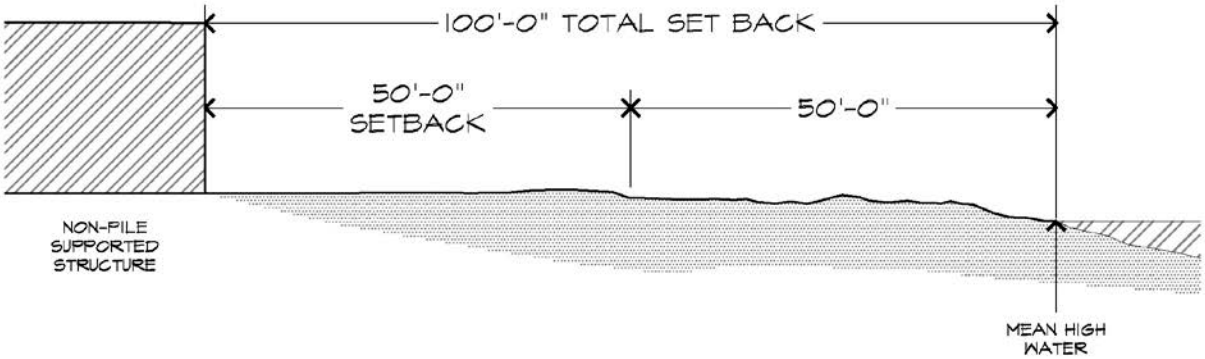
BEACH AREA WITH BERMS



BEACH AREA WITHOUT BERMS



(2) Within known or potential nesting areas for marine turtles, as determined by the County Biologist, the state, and/or other appropriate agencies, the County Biologist may, in cooperation with other appropriate agencies, determine that specific segments of shorelines have been previously lawfully altered to such a degree that suitable nesting habitat for marine turtles is no longer present. In such cases, the County Biologist in cooperation with the Florida Department of Environmental Protection may recommend reasonable measures to restore the nesting habitat. If such measures are not feasible, the specific requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

(3) Any such dock or walkway shall be designed to the following criteria to minimize adverse impacts on marine turtles:

a. The structure shall have a minimum horizontal distance of four (4) feet between pilings or other upright members.
b. The structure shall have a minimum clearance of two (2) feet above grade.
c. If stairs or a ramp with less than the minimum two (2) feet clearance above grade is required, such stairs or ramp shall be enclosed with vertical barriers no greater than two (2) inches apart.

(4) All outdoor and indoor artificial lighting complies with Sections 12-116 and 12-117.

Sec. 118-13. Endangered Species.

(a) *Applicability.* On parcels that the U.S. Fish and Wildlife Service has determined are within critical habitat or designated potentially suitable habitat for federally listed threatened or endangered species, no development shall occur without full compliance with the terms of this chapter in addition to other applicable regulations, including, but not limited to, Section 122-8

(b) *Technical assistance required.* For any development permit application filed with Monroe County for properties located within critical habitat or designated potentially suitable habitat for federally listed threatened and endangered species that are not included in the U.S. Fish and Wildlife Service's April 30, 2010 Biological Opinion, and/or are not included in the species addressed under Section 122-8 of the Monroe County Land Development Code, the property owner shall be required to consult directly with the U.S. Fish and Wildlife Service and provide authorization from the U.S. Fish and Wildlife Service to Monroe County before commencement of development. Any conditions imposed by the U.S. Fish and Wildlife Service shall be incorporated as conditions of the Monroe County development permit.

Sec. 118-14. Protection of Freshwater Lenses.

(a) No new water supply wells, including but not limited to domestic water supply wells (for drinking, bathing, eating, cooking or sanitation) and irrigation wells, shall be installed in areas that have a discernible groundwater freshwater lens.

(b) Existing water supply wells, including but not limited to domestic water supply wells and irrigation wells that are within a discernible groundwater freshwater lens shall be properly abandoned by pressure-grouting from bottom to top with neat cement grout in accordance with plugging requirements described in FDEP Chapter 62-532.500(4), F.A.C. Abandonment must be completed prior to issuance of any building permits or modifications for the property.

(c) Chemicals that have a groundwater cleanup target level in Chapter 62-777, F.A.C., shall be protected from entering a groundwater freshwater lens by the following restrictions on lands overlying a discernible groundwater freshwater lens:

(1) Production of these chemicals is prohibited.
(2) Storage, handling, and use of these chemicals shall be solely for the onsite maintenance or operation of the business or residence. Commercial storage, commercial handling, or commercial use of these chemicals to serve offsite facilities is prohibited.
(3) These chemicals shall be stored, handled, and used only in accordance with the manufacturer's instructions.
(4) These chemicals shall be stored solely in original consumer packages in which they are typically distributed for consumer or commercial use, or in other suitable containers properly labeled so as to indicate their contents.
(5) Liquids that contain these chemicals shall be stored with secondary containment. Secondary containment shall be an impermeable coating, membrane, surface, or structure in which tanks or containers are placed. For tanks or containers larger than 110 gallons, the secondary containment shall hold at least 110% of the volume of the largest tank or container. For tanks or containers of one (1) to 110 gallons, the secondary containment shall hold at least twenty percent (20%) of the combined volume of all the tanks or containers within the secondary containment, but no less than the volume of the single largest tank or container. A double-walled tank is considered secondary containment. All materials in a secondary containment shall be stored in a manner which, in the event of a release, prevents contact of the chemicals with soil, groundwater, or surface water.
(6) Buildings that contain these chemicals shall have no floor drains or outlets, except those plumbed to a sanitary sewer system.
(7) Release of these chemicals in any quantity on soils, in groundwater, or in surface waters is prohibited except when used according to the manufacturer's instructions, including but not limited to, the quantity and frequency of application.

(8) Untreated water that contains these chemicals in concentrations above groundwater cleanup target levels shall not be released to the soil, groundwater, or surface water.

(9) All waste products and containers containing these chemicals shall be properly disposed of in accordance with federal, state, and county requirements.

Sec. 118-15. Marina Siting Criteria

(a) *Siting criteria.* The development of new marina facilities shall be located in areas where maximum physical advantages exist and where no unreasonable or excessive impacts are foreseen on marine resources. Proposed new marina facilities shall meet the following requirements:

(1) *Benthic vegetation and hardbottom communities.* Siting of marinas in areas of seagrass or hardbottom (including hard and soft corals) should be avoided. Boat mooring sites (slips or docks) shall not be located over a seagrass bed community or hardbottom community regardless of water depth. No impacts to seagrass beds or hardbottom communities should result from the construction or use of new marina development.

(2) *Adequacy of circulation and tidal flushing.* The proposed marina site shall exhibit adequate circulation and tidal flushing. The waterway upon which the marina is proposed to be sited shall meet or exceed state water quality standards, and must currently have "Good" water quality as indicated in the County's most current canal inventory and assessment data (as applicable). New marina development shall not adversely impact the quality of water during construction or use.

(3) *Adequate water depth and access.* There shall be a minimum of four (4) feet of water depth at MLW at the marina site (including the mooring slips, turning basin, and access channels), and the water depth shall be continuous to open water over a channel width of twenty (20) feet. Water depth shall be adequate for the proposed vessel use such that there be a minimum of one (1) foot clearance between the deepest draft of the vessel and the bottom at MLW. Greater water depths shall be required for those facilities proposed for accommodating vessels having greater than a three (3) foot draft. Sites shall not require dredging or filling to provide access.

(4) *Minimal shoreline modification.* Marinas shall not be sited adjacent to unaltered shorelines as defined in Sec. 101-1 of the Land Development Code. Minimal modification to the shoreline shall be permitted per County Land Development Code Section 118-1, 118-12(m), and (o).

(5) Q*uality of upland areas and degree of alteration necessary.* Marinas shall not be sited on lands designated as Tier I or Tier III-A, if clearing is proposed. Marina development shall not adversely impact the upland area of, or adjacent to, a proposed marina site. Additionally, marinas shall not be permitted on offshore islands or on units of the Coastal Barrier Resources System (CBRS).

(6) *Propeller dredging problem areas*. Siting of marinas in areas of seagrass propeller scarring should be avoided. Marinas shall not be located adjacent to areas of severe

seagrass scarring, based on the most current data available from the Florida Fish and Wildlife Research Institute.

(7) *Impact of boats on Florida manatee, American crocodile, and sea turtles.* Marinas shall be sited so as to prevent impacts to the Florida manatee, American crocodile, and marine turtles and protect their habitat by avoiding areas of known American crocodile range, areas with high watercraft Florida manatee mortality, or areas that include a beach known to be used for marine turtle nesting. Site characteristics can be assessed using current data from the Florida Fish and Wildlife Conservation Commission.

(8) *Other significant resources*. No adverse impact shall be permitted on archaeological or historic resources/sites.

(b) Applicants for new marina development shall be responsible for providing existing physical and environmental site data specific to the proposed site to demonstrate the marina siting criteria described above are met.

(c) Applicants for development approval of marinas with three (3) or more wet slips shall meet the following:

(1) Monroe County's marina siting criteria (Sec. 118-15 (a));
(2) Monroe County's dock siting criteria (Sec. 118-12(m)); and
(3) criteria of Rules 62-312 and 18-21.0041, F.A.C. and §163.3178(2)(g), F.S.

(d) Applicants for development approval of docking facilities for fewer than three (3) wet slips shall meet the following criteria:

(1) Monroe County's dock siting criteria (Sec. 118-12(m)); and
(2) criteria of Rules 62-312 and 18-21.0041, F.A.C.

Sec. 118-16. Marina Pumpout Requirement

(a) *New marinas.* New marinas and marine facilities with ten slips or more, or one live-aboard slip, shall provide a fixed pumpout station.

(b) *Signage.* All marinas, regardless of size, shall provide signage conspicuously posted at dockage sites educating the live-aboard public about the importance of pumping out and giving clear directions to the nearest pumpout stations.

(c) *Existing facilities.* Existing marinas and marine facilities that do not have an on-site pumpout station, as identified through the Monroe County Marine Facility Survey or other best available data sources, shall be notified in writing of the requirements for on-site pumpout facilities and signage (and any available funding assistance, such as the DEP Clean Vessel Act grant program) within 18 months after the adoption this Land Development Code. Such marinas and marine facilities shall have 12 months from the

written notification to provide an on-site pumpout station and associated signage. All marine facilities and marinas that are required to provide on-site pumpout stations shall keep those pumpout stations operational, and ensure that pumpout service is available to the patrons of those marine facilities and marinas.

Secs. 118-16—118-39. Reserved.

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ARTICLE II. RESOURCE EXTRACTION

Sec. 118-40. General.

All resource exploration and extraction activities in the County shall comply with the provision of this article in order to ensure that such activities do not adversely affect long-term ecological values in the County and that abandoned exploration and extraction sites will be restored.

Sec. 118-41. Resource Exploration and Extraction Standards.

(a) New resource exploration and extraction activities and expansions of existing resource exploration and extraction operations shall be prohibited.

(b) Oil and gas exploration, extraction and production shall be prohibited. Hydraulic fracturing, commonly called fracking, for extracting oil or natural gas from deep underground shall be prohibited.

(c) Blasting shall be prohibited for resource extraction activities.

(d) All resource exploration and extraction activities shall:

(1) Be designed so that no area of excavation, storage area for equipment or machinery, or other structure or facility is closer than:

a. Two-hundred feet to any property line; and
b. Five-hundred feet to any residential or nonresource exploration or extraction related nonresidential use in existence on the date the permit is issued;

(2) Be located on a parcel of at least 20 acres;
(3) Be fenced or blocked so as to prevent unauthorized entry into the resource exploration or extraction operation through access roads;
(4) Not involve excavation greater than 60 feet below natural grade;
(5) Not cause the introduction of saline aquifer waters into freshwater aquifers;
(6) Involve restoration of disturbed areas at the completion of the resource exploration or extraction operation in accordance with Section 118-42, and the implementation of the restoration plan shall be secured by a surety bond or other financial guarantee of performance approved by the County;
(7) Operate solely between the hours of 8:00 a.m. and 5:00 p.m.;
(8) Be conducted in accordance with FDEP standards including FDEP Rule 62C-36 (*Limestone Reclamation Requirements*); and
(9) Utilize methods to prevent groundwater and surface water contamination during resource exploration or extraction operations. These shall include but not be limited to the following:

a. The first flush of runoff from the resource exploration or extraction site shall be retained on-site;
b. Turbidity controls shall be used to prevent contamination of adjacent off-site surface waters; and
c. All point sources of pollution shall be managed in accordance with applicable regulations of the FDEP and the U.S. Army Corps of Engineers.

(e) An annual permit from the County shall be required for the continued operation of existing resource exploration or extraction operations. When an application for an annual permit for existing resource extraction operations is submitted, the required groundwater and surface water quality protection measures shall be outlined by the applicant, and shall be attached as permit conditions when the permit is issued.

(f) Monitoring shall be required to determine compliance with state water quality standards. In the event that water quality standards are violated as a result of a mining operation, the mining activity shall be stopped, and relevant fines and required mitigation of habitat impacts shall be fulfilled.

(g) Authorization to operate a permitted resource exploration or extraction site shall remain valid and in force in accordance with the permit(s). Should resource exploration or extraction activities cease for a period of three (3) years, regardless of permit status, resource exploration or extraction permission shall expire unless extended. Extension of authorization from the Planning and Environmental Resources Department shall be requested in writing by the applicant or operator and, subject to BOCC's' approval, may be extended for a period of up to three (3) years.

(h) All existing resource exploration or extraction sites shall register with the County Biologist by December 30, 2016. Any resource exploration or extraction site for which an application for registration has not been submitted to the County Biologist within the time period specified above shall lose any vested rights for the operation of the resource exploration or extraction site. Registration shall be accomplished by providing the following information to the County Biologist:

(1) Name, address, and telephone number of current owner and operator;
(2) Survey with a legal description of the entire site;
(3) Recent aerial imagery of the entire site delineating areas previously mined and reclaimed, areas of active mining and areas of future mining; and
(4) Copies of all other permits for the resource exploration or extraction operation, including site plans, operations plans and reclamation plans associated with the permits issued, if applicable, by the Florida Department of Environmental Protection, South Florida Water Management District, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency.

(i) If a change in the ownership or operator of a mine takes place at any time, the new owner or operator shall notify the County Biologist, in writing, of the current name, address and telephone number of the owner and operator of the resource exploration or extraction site. Notification shall take place within60 days of the change of ownership or operator. The transferee shall provide, in a form acceptable to the County Biologist, proof of financial responsibility as required by subsection 118-42(c).

(j) The operator of every approved or registered resource exploration or extraction site shall file a written annual report with the County Biologist within 45 days after the end of each fiscal year (September 30th) to include the following:

(1) Identification of lands mined during the preceding year and lands expected to be mined during the current year;
(2) Discussion of the reclamation progress for each area where reclamation has been completed in the last year or where reclamation is in progress and a discussion of reclamation planned for the current year;
(3) Aerial photographs at a scale of 1 inch = 200 feet or 1 inch = 400 feet (photos of flight most recently available through the County, FDOT, NRCS or other agency will be accepted) showing the extent of land disturbance and reclamation during the last year;
(4) A summary of results of the previous year's environmental monitoring program if required in the operating permit;
(5) Copies of all related inspection reports not previously furnished which are required by state, federal, regional or local regulatory agencies;
(6) An update on major access routes, impacted intersections closest to the site and daily volume of vehicles hauling mined materials; and
(7) A notarized document from a licensed Florida registered professional engineer, professional geologist, or an authorized representative familiar with the resource exploration or extraction activities, certifying that the project is being developed and operated in strict accordance with the conditions set forth in the approved permits and reclamation plan.

Failure to file the required annual progress report shall be grounds for suspension of the operating permit. An extension of time for filing of 45 additional days may be granted by the County Biologist upon request and for good cause shown.

Sec. 118-42. Restoration Standards.

(a) As a condition of renewal for operating permits, existing resource exploration or extraction operators shall submit a reclamation plan for approval by the County. If the site has valid and current permits to operate and such permits do not require reclamation, the operator shall provide documentation of such to the County.

(b) All parcels of land that are used for resource exploration or extraction operations shall be restored as follows (unless otherwise specified in valid and current permits):

(1) Restoration shall be a continuous process, and each portion of the parcel shall be restored within two years after resource exploration or extraction is completed for that portion;

(2) Topsoil shall be restored in approximately the same quality and quantity as existed at the time the resource exploration or extraction operation was initiated;

(3) Any body of water created by the resource exploration or extraction operation shall have a graded shoreline with a slope not to exceed one (1) foot vertical to five (5) feet horizontal from mean high water (MHW) to a depth of six (6) feet below the mean low water (MLW) elevation, unless an alternate slope is approved by the County Biologist. Although no minimum slope below the littoral zone is required, the slope below the littoral zone shall be constructed so that natural soil movement will not reduce the littoral zone area. Such slopes shall be subject to approval by the County Biologist.

(4) All equipment, machinery and structures, except for structures that are usable for recreational purposes or any other use authorized in the area, shall be removed within six months after the resource exploration or extraction operation is terminated and restoration is completed; and

(5) Reclamation shall to the maximum extent practical result in the reestablishment of the vegetation association that existed prior to the exploration or extraction activity or native habitat appropriate to the area as determined by the County Biologist, subject to the following:

a. Revegetation of all disturbed areas shall be conducted in a manner so as to achieve permanent revegetation which will minimize soil erosion and surface water runoff, conceal the effects of surface mining, and recognize the requirements for appropriate habitat for fish and wildlife. Should washes, rills, gullies or the like develop after revegetation and before final County approval of the reclamation area, such eroded areas shall be repaired and the slopes stabilized.

b. Vegetation types utilized for revegetation shall consist of species of grasses, shrubs, trees and aquatic and wetlands vegetation native to the area and well-adapted to the soil conditions and terrain features prevalent on the site being restored. In no instance shall any invasive exotic plant species be planted.

(c) Before an operating permit is issued or renewed, the operator shall provide proof of financial responsibility including a reclamation guarantee to ensure monies will be available to complete the reclamation plan, subject to the following:

(1) Acceptable forms of the financial guarantee include cash, irrevocable letters of credit, or surety bonds. The security may be provided in an alternate form acceptable to the

County Attorney. In all cases, the form of the guarantee shall be subject to approval by the County Attorney.

(2) The amount of the guarantee shall be set by the BOCC, in an amount not less than 110% of the estimated cost of reclamation based upon the phase of work that is being permitted.

(3) The amount required to complete the reclamation may increase or decrease because of, among other things, progress that has occurred in compliance with the reclamation plan or changes in technology or inflation. If the owner or operator feels that the amount of the guarantee held by the County exceeds 110% of the amount necessary to complete the reclamation plan, then the owner or operator may submit a request for a proportionate reduction and return of funds. Such request shall accompany the annual progress report and shall provide justification for the request. If the County Biologist feels that the amount of the guarantee held by the County is less than 110% of the amount necessary to complete the reclamation, the County may request additional amounts of guarantee. After review, the County Biologist shall recommend to the BOCC that the amount of the guarantee be reduced or that additional guarantee amounts are necessary. The BOCC shall review the recommendation of the County Biologist and determine the amount by which the guarantee shall be reduced or increased accordingly. Failure of the operator to post such additional guarantee amount shall be grounds for suspension or revocation of the operating permit. Reduction in the amount of the financial security shall not occur more often than once in each year.

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Chapter 122 FLOODPLAIN MANAGEMENT

Sec. 122-1. Purpose and Intent.

(a) It is the purpose of the floodplain management provisions to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in increases in erosion or in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of floodwaters;

(4) Control filling, grading, dredging and other development that may increase erosion or flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands;

(6) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(7) To minimize prolonged business interruptions;

(8) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in floodplains;

(9) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such manner as to minimize future flood blight areas; and

(10) To ensure that potential home buyers are notified that the property is in a floodplain area.

(b) The BOCC deem it in the best interest of its citizens that prudent measures be taken to minimize the potential public and private loss due to flooding. It is the intent of the BOCC that the county at all times be eligible for, and receive, the benefit of participation in the National Flood Insurance Program. It is therefore the intent of the BOCC that the provisions of this chapter be strictly adhered to in all areas of special flood hazard within the jurisdiction of the unincorporated areas of the county.

Sec. 122-2. General provisions.

(a) *Applicability.* Except as provided for the elevated portion of a nonconforming residential structure by Section 122-4(a)(10), no structure or manufactured home hereafter shall be located, extended, converted or structurally altered, and no development shall occur, without full compliance with the terms of this chapter in addition to other applicable regulations, including, but not limited to, 44 CFR 60.3(a)(2).

(b) Basis for Establishing Special Flood Hazard Maps; Species Focus Area Maps (SFAMs) with Species Focus Area Buffers and Federally Protected Species Area Real Estate (RE) List; and Species Assessment Guides (SAGs).

(1) The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in its February 18, 2005 Maps with accompanying supporting data, and any revisions thereof, are adopted by reference and declared to be a part of this chapter, and shall be kept on file, available to the public, in the offices of the county Building Department. Letter of map amendments, letter of map revisions, letter of map revision based on fill, and conditional letter of map revisions approved by FEMA are acceptable for implementation of this regulation.

(2) Species focus area maps (SFAMs) with Species focus area buffers and species real estate (RE) list. FEMA and the U.S. Fish and Wildlife Service (FWS) have provided the species focus area maps (SFAMs) mailed to Monroe County and dated April 30, 2011, and a listing of real estate numbers of parcels (RE list) emailed to Monroe County and dated November 18, 2011, that are within the SFAMs and that have been identified by FWS. The SFAMs and the RE list that are within the SFAMs identified by the FWS in accordance with the biological opinion, dated April 30, 2010, as amended December 14, 2010, are hereby declared to be a part of this chapter. The SFAMs and RE list are on file at the Monroe County Clerk's office and the Monroe County Planning & Environmental Resources Department office.

(3) Species assessment guides (SAGs). FEMA and FWS provided the May 20, 2012 species assessment guides (SAGs) to Monroe County and Monroe County adopted these SAGs on September 13, 2012. FEMA and the FWS provided revisions of the SAGs to Monroe County on July 29, 2013. Permits applications submitted after February 17, 2014, the effective date of this ordinance, shall be reviewed utilizing the July 29, 2013 FWS/FEMA SAGs. These SAGs are declared to be a part of this chapter. The SAGs are on file at the Monroe County Clerk's office and the Monroe County Planning & Environmental Resources Department office.

(c) *Rules for interpreting flood hazard issues.* The boundaries of the flood hazard areas shown on the official flood insurance rate maps may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the

floodplain administrator, in consultation with the Building Official. In interpreting other provisions of this chapter, the Building Official shall be guided by the current edition of FEMA's 44 CFR, and FEMA's interpretive letters, policy statements and technical bulletins as adopted by resolution from time to time by the BOCC. Additionally, the Building Official shall also obtain, review and reasonably use any base flood elevation and floodway data available from a federal, state or other source(s), as criteria for requiring that new construction, substantial improvements, and other developments meet the criteria required in the appropriate flood zone.

Sec. 122-3. Permit Requirements.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjacent to contiguous native habitat means an area of native habitat sharing a boundary at one or more points of intersection with other native habitat. For purposes of this land development code, an intervening road, right-of-way or easement shall not destroy the adjacency of the habitat. However, U.S. 1, canals and open water shall constitute a break in adjacency.

Alteration means any change or modification in construction type, materials, or occupancy.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, clearing, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a nonbasement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Enclosure means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid walls and used solely for limited storage, parking or entryways. Enclosures shall not be constructed, equipped or used for habitational or other purposes.

Existing construction means structures for which the start of construction commenced before January 1, 1975. Existing construction is also known as pre-FIRM structures.

Existing manufactured home park means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of the streets, and either final site grading or the pouring of concrete pads is completed before January 1, 1975, and in which, at the time of application, there are no site built residences or the park or subdivision is limited to manufactured home by this chapter.

Finishing materials means anything beyond basic wall construction pursuant to the most recent FEMA Technical Bulletin, which is normally associated with habitable space. Finishing materials include, but are not limited to, ceiling mold, trim, baseboards, decorative finish work, wainscoting, and textured woods.

Historic structure means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
(c) Individually listed on state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
(d) Individually listed on a county inventory of historic places in communities with historic preservation programs that have been certified either:
    (1) By an approved state program as determined by the Secretary of the Interior, or
    (2) Directly by the Secretary of the Interior in states without approved programs.

Illegal structure or use means a structure or use that is not a legal structure or legal use as defined in this chapter.

Legal structure means a structure that was permitted by the floodplain regulation in effect at the time construction commenced on the structure in its current configuration and received a permit or final inspection or certificate of occupancy for the structure in its current configuration.

Legal use means a use that was permitted by the floodplain regulations at the time the use commenced on the property.

Limited storage means that which is incidental and accessory to the principal use of the structure. For example, if the structure is a residence, storage should be limited to items such as lawn and garden equipment, tires, and other low damage items which will not suffer flood damage or can be conveniently moved to the elevated part of the building. Flood insurance coverage for enclosures below the base flood elevation (BFE) is very limited.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailer, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Market value means the county property appraiser's value of the structure plus 20 percent. A uniform appraisal report for determination of market value submitted by the applicant may be used if the county Building Official considers such appraisal consistent with local construction costs. Where appraisal is not accepted because it appears to be inconsistent with local construction costs an applicant may request review by an independent third party appraiser duly authorized by the county. The cost of independent review shall be borne by the applicant. The reviewing appraiser shall determine if the appraisal value reasonably reflects an appropriate value of the structure. The independent appraiser's determination shall be in writing. Professionals preparing appraisal shall be required to possess certifications as state certified residential appraisers for appraising one to four family residential properties and state certified general appraisers for all other properties including commercial and multi-residential.

New construction means those structures for which the start of construction commenced on or after January 1, 1975. New construction is also knows as post-FIRM structures.

Nonconforming structure means a below base flood elevation structure or a portion thereof (such as an enclosure, materials with no openings, flood resistant materials), which was lawfully existing or permitted, and is not fully compliant with the terms of this chapter. A nonconforming structure shall remain subject to the terms of this chapter.

Notice to proceed means written authorization by the county growth management division to the permittee authorizing permitted development to begin.

Pure manufactured home park means a manufactured home park that at the time of application has no site-built residences or a park or subdivision which is limited to manufactured homes only by this chapter.

Recreational vehicle means a vehicle that is:

(1) Built on a single chassis;

(2) Four hundred square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Start of construction means (for other than new construction or substantial improvements under the Coastal Barrier Resources Act) includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. For substantial improvements the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building whether or not the alteration affects the external dimensions of the building. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it’s before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. All structures that are determined to be substantially damaged are automatically considered to be substantial improvements, regardless of the actual repair work performed. If the cost necessary to fully repair the structure to its before damage condition is equal to or greater than 50 percent of the structure's market value before damages, then the structure must be elevated (or flood proofed if it is non-residential) to or above the base flood elevation (BFE), and meet other applicable NFIP requirements. Items that may be excluded from the cost to repair include plans, specifications, survey costs, permit fees, and other items which are separate from the repair. Items that may also be excluded include demolition or emergency repairs (costs to temporarily stabilize a building so that it's safe to enter to evaluate and identify required repairs) and improvements to items outside the building, such as the driveway, septic systems, wells, fencing, landscaping and detached structures.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage, "regardless of the actual repair work performed. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local Building Official and which are the minimum necessary to assure safe living conditions; or

(b) The cost of repairs required to remedy health, safety, and sanitary code deficiencies can be deducted from the overall cost of an improvement, but only if:

(1) An appropriate regulatory official such as a Building Official, Fire Marshal, or Health Officer was informed about and knows the extent of the code related deficiencies, and

(2) The deficiency was in existence prior to the damage event or improvement and will not be triggered solely by the fact that the structure is being improved or repaired.

In addition, for any repair required to meet health, sanitary, and safety codes, only the minimum necessary to assure safe living conditions should be deducted, including those improvements required by Chapter 11, 2012 Florida Accessibility Code. Costs of repairs that are in excess of the minimum necessary for continued occupancy or use will be counted toward the cost of the overall improvement; or

(c) Any alterations of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Floodplain management requirements for new construction apply to substantial improvements.

Supplemental information for substantial improvement.

The basic types of improvements the could be made to structures include but are not limited to rehabilitations or reconstructions that do not increase square footage, and lateral or vertical additions that do increase square footage.

Rehabilitation or reconstruction would be a partial or complete "gutting" and replacement of internal workings and may or may not include structural changes. If this action is substantial, i.e., over 50 percent of the structure's market value, it is considered new construction, and the entire building must be elevated to or above the base flood elevation (BFE) (or floodproofed if the building is non-residential).

For a lateral addition, if the substantial improvement is to add a room or rooms outside the footprint of the existing building, only the addition is required to be elevated to or above the BFE, i.e.; the existing building does not have to be elevated. If the proposed lateral addition also includes rehabilitation or remodeling of the existing building, then the whole project as a combination of work must be considered. Vertical additions would require that the entire structure be elevated to or above the BFE. Even though the improvement itself is entirely above

the BFE, it is dependent on the walls and foundation of the existing building for structural support.

(b) Except for work specifically exempted under Chapter 6, the Building Official shall require building permits/floodplain development permits for all proposed construction or other improvements within areas of special flood hazard. In addition to the standard requirements for a building permit, an application for a building permit for construction or improvements within areas of special flood hazard shall contain the information and certifications set forth in a form provided by the Building Official.

(c) All building foundations shall rest directly on natural rock, on concrete piling driven to rock or on friction piling (concrete or wood) and shall be anchored to such rock support by holes, 16 inches in minimum diameter, augured into such rock a minimum depth of three feet and reinforced by a minimum of four #5 vertical rods extending up into the piers above a minimum of 18 inches and tied to the vertical steel of the pier. Wooden pilings shall be locked into 16-inch auger foundations by at least a #5 rebar extending through the piling and three to five inches beyond.

(d) The permit holder shall provide a floor elevation after the lowest floor is completed or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the lowest horizontal structural members of the lowest floor. Floodproofing certification for nonresidential structures in A-Zones shall be provided prior to a certificate of occupancy or prior to final inspection.

(e) Within 21 calendar days of establishment of the lowest floor elevation, or upon placement of the lowest horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the Building Official a certification of the elevation of the lowest floor within A zones or the lowest portion of the lowest horizontal structural members of the lowest floor within V zones, whichever is applicable, as built in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is used for a building within A zones, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day period and prior to submission of the certification shall be at the permit holder's risk. The Building Official shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required hereby shall be causes to issue a stop-work order for the project.

(f) The degree of flood protection required in this chapter is reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted

within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Sec. 122-4. Standards for Issuance of Building Permits in Areas of Special Flood Hazard.

(a) Generally.

No building permit for proposed construction or development activity within an area of special flood hazard shall be granted, by the Building Official or the floodplain administrator, unless the proposed new construction is in compliance with the standards set forth in this chapter. In all areas of special flood hazard, the following standards apply:

(1) All new construction and substantial improvements shall be adequately anchored by pilings or columns to prevent flotation, collapse and lateral movement of the structure.

(2) All applications deemed substantial or nonsubstantial must be approved by the floodplain administrator, or the Building Official/Director.

(3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(4) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) All new or replacement water supply systems shall be designed and constructed by methods and practices that minimize flood damage.

(6) All new or replacement sanitary sewage systems shall be designed and constructed to minimize or eliminate infiltration of floodwaters into the system and discharge from the system into floodwaters. Joints between sewer drain components shall be sealed with caulking, plastic or rubber gaskets, and all manhole covers shall be sealed in a similar manner.

(7) On-site waste disposal systems shall be located and constructed to minimize or eliminate damage to them and contamination from them during flooding.

(8) Any alteration, repair, reconstruction or improvement to a structure that already is in compliance with the provisions of this chapter shall meet the requirements of new construction as contained in this chapter.

(9) Illegal or nonconforming uses, structures, and construction below elevated post-FIRM buildings shall not be expanded or improved or repaired from damages of any origin and no building permit shall be issued for any improvements to below base flood enclosures, other than for demolition or a permit to remedy a life safety hazard, unless the structure is brought into compliance with this chapter.

(10) The elevated portion of any nonconforming structure may be extended, expanded, or structurally altered upon meeting the following conditions:

a. If the structure is located within an A or V zone, and the improvement is not substantial as defined in this chapter.

b. If the structure is located within a V-zone, prior to the issuance of a building permit, the permit applicant shall submit a professional engineer's or registered architect's sealed certification that the improvements to the nonconforming structure do not subject the elevated portion of the structure to increased flood risk or structural damage.

(11) No manmade alteration of sand dunes, dune ridge, mangrove stands or wetlands shall be allowed which would increase potential flood damage.

(12) All new construction shall be located landward of the reach of mean high tide.

(13) All agreements for deed, purchase agreements, leases, or other contracts for sale or exchange of lots within areas of special flood hazard shall carry the following flood hazard warning prominently displayed on the document:

FLOOD HAZARD WARNING

This property may be subject to flooding. You should contact the county Growth Management Division and obtain the latest information regarding flood elevations and restrictions on development before making use of this property.

(b) Additional standards.

In all areas of special flood hazard where base flood elevation data has been provided the following provisions are required:

(1) Residential construction.

a. New construction and substantial improvement of any residential structure shall have the lowest floor for zones A1-30, AE and AH or bottom of the lowest supporting member of the lowest floor for zones V1-30, VE or V elevated at or above the base flood elevation level.

b. Electrical and mechanical equipment servicing an elevated structure must be elevated at or above the required base flood elevation. Elevators may be placed below the base flood elevation, if the mechanical and electrical equipment serving the elevator is designed, certified and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

c. Sewer and storm drainage systems, which extend below the base flood elevation, shall be provided with automatic backflow prevention valves or devices installed at the point where the line passes an exterior wall or slab.

d. Except as noted in subsection (b)(7) of this section, the space below the lowest floor of an elevated structure shall be used exclusively for parking of vehicles, elevators, limited storage or building access purposes. Such spaces may be enclosed under the following conditions:

1. Only a maximum of 299 square feet of the space shall be enclosed with opaque materials. Any remaining portion of an enclosed area of more than 299 square feet shall only be enclosed with screen or open lattice. This limitation shall not apply to parking of aircraft beneath residential buildings abutting airport districts. Nonconforming areas of 300 square feet or more, enclosed with opaque materials, existing on April 12, 2004, the effective date of the ordinance from which this section is derived shall be deemed conforming as to the provisions of this subsection 122-4(b)(1)d.1.; however, such enclosures shall not be expanded or substantially improved unless they are brought into compliance with this chapter.

2. The walls of any enclosed area below the base flood elevation in zone AE, on the community FIRM shall be provided with openings such as vents, louvers or automatic valves which permit the level of floodwaters within the enclosed area to match the rising and falling of floodwaters on the outside of the structure. A minimum of two openings located on separate walls shall be provided having a minimum total net area of one square inch for each square foot of enclosed area, where the enclosed area is calculated by outside dimensions. A vented garage door may be used in lieu of venting one wall opening. Openings shall be situated such that the bottom of each opening is no higher than one foot above finished grade.

3. Interior walls, ceilings and floor, below base flood elevation, in enclosures may be finished with allowable exterior finish, regardless of whether this is specified in the permit or not, in accordance with the most recent FEMA Technical Bulletin. The most recent Technical Bulletin limits the finish to basic wall ceiling and floor construction. This is meant to exclude the use

of materials and finishes normally associated with living areas constructed above base flood elevation from those areas of the enclosure located below the base flood elevation.

4. The interior portion of an enclosed area below an elevated building may not be partitioned except that garages may be separated from storage and entryway. In the event an existing enclosure is enlarged, the walls between the existing enclosure and the additional enclosure must be deleted. Enclosed areas below an elevated building and laterally attached enclosed areas below base flood elevation must be void of utilities that would service the enclosure and cannot be temperature controlled.

5. Necessary electrical switches for required lighting circuits may be located below the base flood elevation, provided they are of the outdoor water-resistant variety on a separate ground-fault interrupt circuit breaker and do not exceed the minimum number required by law. Except for one GFI, electrical receptacles shall not be located below the base flood elevation.

6. Walls constructed entirely of open lattice work or screen mesh shall be considered as satisfying the requirements of subsections 122-4(b)(1)d.2., and 122-4(b)(4). of this section.

7. The area enclosed below the base flood elevation shall not be used for human habitation.

8. Except as noted in subsections 122-4(b)(1)b. and (b)(1)d.5. of this section or required by an applicable code no electrical, mechanical or plumbing may be located below the base flood elevation.

(2) Nonresidential construction.

a. New construction and substantial improvements of any commercial, industrial or other nonresidential structures within zone AE on the community's flood insurance rate map (FIRM) shall have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Elevating above base flood elevation may decrease the cost of flood insurance. Where a nonresidential structure is intended to be made watertight below the base flood level, a registered professional engineer or architect shall develop and/or review structural design specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted

standards of practice for meeting the applicable provisions contained herein. A record of such floodproofing certification which shall include the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be provided to the Building Department. Wet floodproofing is not acceptable. New construction or cumulative substantial improvements of any commercial, industrial or other nonresidential structures within zones V1-30, VE or V shall have the bottom of the lowest horizontal structural member of the lowest floor, elevated to or above the base flood elevation.

b. Enclosed areas below an elevated structure at grade elevation for nonresidential, commercial or industrial uses shall be permitted for limited storage or parking purposes, provided that they are anchored to prevent flotation, collapse or lateral movement of the structure and do not exceed 300 square feet of enclosed area and are in accordance with the requirements of subsection 122-4 (b)(5)g. of this section for V zones or subsections 122-4 (b)(1)d.1—(b)(1)d.8. of this section for A zones. Plans for such structure shall be submitted to the Building Official for approval prior to construction.

(3) Accessory structures.

a. Residential accessory structures.

1. Any prefabricated light metal structure, which meets the following criteria, may be permitted in an A or V zones if:

i. The enclosed area is 150 square feet or less;

ii. The use is limited to limited storage; and

iii. The structure is properly anchored to prevent flotation, collapse, and lateral movement.

2. Accessory light metal structures which exceed the 150 square feet of enclosed space threshold or concrete or wood accessory structures built on site regardless of size or value may be permitted if they meet all of the criteria outlined in subsection 122-4(b)(1)d within A zones or the criteria set forth in Section (b)(5)g within V zones.

b. Nonresidential accessory structures.

1. All nonresidential accessory structures, or enclosed areas, which meet the following criteria, may be permitted if:

i. The enclosed area is 300 square feet or less;

ii. The use is restricted to limited storage and parking only;

iii. They meet the breakaway wall standards outlined in subsection 122-4(b)(5) a. within V zones or the venting requirements outlined in Section 122-4(b)(1)d. 2. within A zones;

iv. They meet the other requirements as outlined in subsection (b)(1)d. of this section; and

v. The structures are properly anchored to prevent flotation, collapse and lateral movement.

2. Accessory structures in an A zone that exceed the 300 square feet of enclosed space threshold may be permitted if they meet the floodproofing criteria outlined in subsection (b)(2)a. of this section. Accessory structures in a V zone that exceed the 300 square feet of enclosed space threshold are strictly prohibited.

(4) Manufactured homes.

a. Effective June 1, 1977, no manufactured home not already in place shall be placed within areas of special flood hazard except in an existing manufactured home park or subdivision, as hereafter defined. In the event that the Federal Emergency Management Agency eliminates the existing manufactured home park or subdivision requirement of 44 CFR 60.3(c)(12), then no manufactured home may be placed below the base flood elevation.

b. A manufactured home that is to be placed on a qualified lot may be placed at an elevation below base flood elevation provided that:

1. The lot on which the manufactured home is to be placed is located in an existing manufactured home park or subdivision and is contiguous to and surrounded by manufactured homes not at base flood elevation.

2. The manufactured homes that are placed or substantially improved (for other than substantial damage due to a flood) on sites in existing manufactured home parks or subdivision in flood hazard areas shall be elevated so that the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above the grade at the site. A lower foundation system could be used if the top of the finished floor of the manufactured home or the bottom of the beam (for V zones) would be at or above the base flood elevation using such foundation.

3. All other foundations requiring elevation of the structure in order to meet the floodplain standards must comply with Section 122-3(b), the provisions of subsection (b)(5) of this section or Chapter 18 of the Florida Building Code whichever is applicable.

c. No solid walled additions may be added to a manufactured home unless the addition is constructed under HUD (Department of Housing and Urban Development) standards and contains a HUD seal or the addition is elevated to or above the base flood elevation. Solid walled additions elevated to or above the base flood elevation must be constructed with fourth wall construction, or certified by an engineer or architect licensed by the state.

d. Screen rooms, open decks and porches may be added to a manufactured home provided the addition is structurally independent and constructed with fourth wall construction.

e. All manufactured homes and state approved manufactured offices or construction trailers for temporary use shall be anchored to resist flotation, collapse and lateral movement by providing over-the-top and frame ties to ground anchors as provided for in F.A.C. Chapter. 15C.

f. An existing manufactured home that is damaged or otherwise in need of repair, reconstruction, improvement, or replacement the value of which meets or exceeds 50 percent of the value of the manufactured home without the repair, reconstruction, improvement or replacement shall not be repaired, reconstructed, improved or replaced except by a manufactured home which meets the most recent standards promulgated by the Department of Housing and Urban Development in 24 CFR 3280.308(C)(2) and, in addition, meets the standards set forth in subsections (b)(4)b., (b)(4)c., and (b)(4)d. of this section, as applicable. For the purposes of determining the value of any replacement manufactured homes under this section, the purchase price, as expressed in an invoice from an arm's length transaction, in a form acceptable to the Building Official, or using market value, as determined in section 122-3(f), whichever is greater, shall control.

g. A manufactured home may be altered or modified by engineering standards more stringent than originally required if the manufactured home is elevated to or above the required base flood elevation.

(5) Coastal high-hazard areas (V zones).

Within the areas of special flood hazard are areas designated as coastal high-hazard areas, which have special flood hazards associated with wave wash. The following provisions shall apply in these areas:

a. New construction or substantial improvements within zones V1-30, VE or V shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is located at or above the base flood elevation level, with the space below the lowest horizontal structural member open or constructed with breakaway walls so as not to impede the flow of floodwaters. Breakaway walls may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with the provisions of Sections 122-4 (b)(5)g., (b)(5)h. and (b)(5)i.

b. New construction or substantial improvements shall be securely anchored on pilings or columns.

c. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values shall be those required by American Society of Civil Engineers (ASCE) Standard number 7.

d. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with the accepted standards of practice for meeting the provisions of Sections 122-4(b)(5)a., (b)(5)b. and (b)(5)c.

e. There shall be no fill used as structural support.

f. Nonstructural fill shall not be placed in a V zone except with an approved Coastal Model meeting the minimum NFIP standards, that demonstrates such fill will not increase potential flood damage by wave ramping and/or deflection.

g. If any space below the base flood elevation level is to be enclosed, such enclosed areas shall not be used for human habitation and must meet the provisions of Sections 122-4(b)(1)d.1., (b)(1)d.3.—(b)(1)d.8. and (b)(5)a. of this section.

h. Prior to construction, plans for any structure that will have enclosed space below the base flood elevation level shall be submitted to the Building Official or his designee for approval.

i. Walls and partitions shall be allowed below the base flood elevation, provided they are not part of the structural support of the building and are designed to break away under the impact of abnormally high tides or wind-driven water without damage to the structural integrity of the building on which they are to be used, and provided that a design load limit of not less than ten and no more than 20 pounds per square foot shall be used as the safe load design for breakaway walls.

j. Compliance with the provisions contained in Section 122-4(b)(5)i. of this section shall be certified by a registered professional engineer or architect.

k. Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the base flood elevation level except as provided for in Sections 122-4(b)(5)g. and (b)(5)i. of this section.

1. No manmade alteration of mangroves or beach berm system shall be permitted which will increase the potential for flood damage.

(6) Basement construction.

No basement shall be constructed in the county.

(7) Enclosures below base flood elevation.

No enclosure below the base flood elevation shall be constructed or equipped for such uses as a kitchen, dining room, family room, recreation room, office, bedroom, bathroom or workshop. This prohibition does not apply to new improvements that are not substantial to post FIRM structures rendered noncompliant by amendments to the flood insurance rate map as long as the improvement is at the same elevation the structure was originally built to; ground level structures whose initial construction began prior to January 1, 1975; and those structures that are listed on the National Register of Historic Places, the Florida Inventory of Historic Places or any inventory of local historic places.

(8) Below base flood elevation variance.

In no event shall a below base flood elevation variance be necessary for improvements to an existing structure whose initial construction began prior to December 31, 1974, or to a legally placed manufactured home when the improvements are not substantial.

(9) Recreational vehicles.

Require that recreational vehicles placed on sites within zones A1-30, AH, and AE, V-130, V and VE on the community's FIRM either:

a. Be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use; or

b. Meet the permit requirements of Section 122-4(b)(4). A recreational vehicle is ready for highway use if it is on its wheels or internal jacking system, designed to be self-propelled or permanently towable by a light duty truck, is attached to the site only by quick disconnect type utilities and security devices, and has no permanent attached additions.

Sec. 122-5. Variances to the Floodplain Management Requirements.

(a) Generally.

Where, owing to special conditions, a literal enforcement of the floodplain management provisions of this chapter would result in exceptional hardship unique to that property or proposed project, the Division of Administrative Hearings (DOAH) may grant requests for variances from the terms of those provisions as will not be contrary to the public interest, will be in harmony with the general purpose and intent of this chapter, and will be the minimum variance that will allow reasonable use of the property.

(b) Procedures.

(1) An application for a variance from the provisions of this chapter for development in an area of special flood hazard shall be filed with the Building Department at the time of application for a building permit.

(2) Within ten (10) days of receipt of a complete application for a variance from the terms of the floodplain management provisions of this chapter, the Building Official shall review the application, and submit a report and recommendation to the DOAH.

(3) The DOAH shall review the application and the reports and recommendations of the Building Official and may consider granting the application for variance in accordance with the administrative hearing process in Florida under chapter 120, Florida Statutes and Florida Administrative Code Chapter 28-106, Parts I and II.

(c) Conditions.

(1) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and only upon all of the following conditions:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

c. A determination that the granting of a variance will not result in increased flood heights; result in additional threats to public safety; result in extraordinary public expense; create nuisance; cause fraud on or victimization of the public; or conflict with other provisions of this chapter or this Code; and

d. Specific written findings linked to the factors below.

(2) The following factors shall be relevant in the granting of a variance:

a. Physical characteristics of construction;

b. Whether it is possible to use the property by a conforming method of construction;

c. The possibility that materials may be swept onto other lands to the injury of others;

d. The danger to life and property due to flooding or erosion damage;

e. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;

f. The importance to the community of the services provided by the proposed facility;

g. The necessity to the facility of a water-dependent location, where applicable;

h. The availability of alternate locations less subject to flooding;

i. The compatibility of the proposed use with existing and anticipated development;

j. The relationship of the proposed use to the comprehensive plan, land development regulations and the floodplain management program for that area;

k. The safety of access to the property for ordinary and emergency vehicles in times of flood;

l. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

m. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(3) When the DOAH considers the propriety of granting a variance , the following factors shall not be considered relevant:

a. The physical disabilities or handicaps and health of the applicant or members of his family;

b. The domestic difficulties of the applicant or members of his family;

c. The financial difficulty of the applicant in complying with the floodplain management provisions of this chapter; or

d. The elevation of surrounding structures.

(4) Any applicant to whom a variance is granted shall be given written notice by the DOAH specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor being located below the base flood elevation.

(5) All variances issued shall require that an owners affidavit be prepared, and recorded with the clerk of the circuit court, which shows that the proposed construction will be located in a special flood hazard area, the number of feet that the lowest floor of the proposed structure will be below the base flood level, and that actuarial flood insurance rates increase as the lowest floor within A zone and the bottom of the lowest horizontal structural member of the lowest floor within V zones elevation decreases.

(6) The Building Official shall maintain records of all variance actions and annually report any variances to the Federal Emergency Management Agency.

Sec. 122-6. Required Inspections of Residential Structures.

(a) Applicability.

Prior to the transfer of ownership of any property occupied by an elevated residential structure with a below base flood enclosed area defined as "new construction" (i.e., construction commenced on or after January 1, 1975) under this chapter, a county approved inspection of the below base flood enclosure shall be conducted. The required inspection shall be conducted no earlier than 180 days prior to the transfer of the property by the seller or the potential purchaser, with the sellers permission. The intent of this inspection, which is strictly limited to the below base flood enclosure, is to identify for county records and purchasers any nonconformities or illegal structures or uses.

(b) Inspections.

The inspection required under this section may be conducted either by an inspector from the growth management division or by an inspector approved by the growth management division. Fees for inspections conducted by the growth management division shall be in accordance with the schedule established by resolution of the BOCC for inspections conducted under the county's flood insurance inspection and compliance program.

(c) Inspection procedures and forms.

All inspections required under this section shall be conducted in accordance with procedures and recorded on county forms approved by the growth management director.

(d) Private inspectors' approval.

Non-county inspectors from an approved list maintained by the growth management division may be retained by property owners to complete the inspections required by this section. These inspectors shall be approved by the growth management division director and shall be required to take an inspection training session conducted by the growth management division to ensure all inspectors fully understand county inspection and reporting requirements. All inspections conducted and inspection reports prepared by non-county inspectors are subject to review by the growth management division. Inspection reports that are found to be incomplete, inaccurate, or contain errors and omissions, may result in the inspector being removed from the approved list of inspectors by the growth management director.

(e) Inspection submittal requirements.

The original of the inspection report, signed by the county inspector or county approved inspector, shall be submitted to the buyer and Building Department ten days prior to the closing date for transfer of property.

(f) Failure to comply with inspection submittal requirements.

Should the inspection report required by this section not be filed with the Building Department and buyer, the seller and buyer will be notified that the structure is in violation of this section. The buyer and his successors and assigns may enforce the terms of this section in law or at equity. The plaintiff may seek injunctive relief in a court of competent jurisdiction to prevent a violation of this section. Attorney's fees and costs incurred in an action to enforce these regulations may be awarded to a substantially prevailing party at the discretion of the court. A plaintiff may seek and the court may award treble damages to an aggrieved party. The sole intent of this inspection is to provide information for recording and monitoring improvements to downstairs enclosures subject to the county's floodplain regulations and in accordance with Board of County Commission Resolution 440-2011, which does not require that the property be brought into compliance prior or subsequently to transfer. This inspection is not intended to be used to identify or prosecute any other unpermitted improvements that are not subject to the floodplain regulations.

(g) Nothing in this section shall prohibit the county from prosecuting illegal, unpermitted improvements under the Pilot Inspection Program (44 CFR 59.30); however the Pilot Inspection Program requires an independent inspection.

(h) If the results of the inspection identify illegal unpermitted improvements Section 122-4 applies when a building permit or special floodplain permit is sought by an applicant.

Sec. 122-7. Floodplain Certificate of Compliance Program.

(a) Generally.

Any property owner who has obtained an inspection of his downstairs enclosure or structure below base flood elevation through either:

(1) FEMA Insurance Inspection Program; or

(2) Inspection at time of sale; or

(3) Voluntary inspection is eligible to obtain a certificate of compliance. The structure must have been found in compliance with the Monroe County floodplain regulations by Monroe County staff. Prior to obtaining the certificate, the owner must record a nonconversion agreement in the Monroe County official land records on a form to be provided by the county. Properties that have received their inspections prior to implementation of the certificate of compliance program may receive a certificate of compliance; however, a re-inspection (with no fee) is necessary to assure compliance has been maintained and the owner must also record the nonconversion agreement, which shall be recorded in the official land records of Monroe County.

(b) Outreach.

The county will mail written notices to property owners, every two years, with downstairs living areas as follows:

(1) The county will obtain data from the Monroe County Property Appraiser Office which will identify all single-family residences which contain enclosures that are identified as living area on the ground floor. Once this data is captured, technical staff will deduct all the parcels that have already received inspections through the FEMA Insurance Inspection Pilot Program, transfer of ownership program, or the previously applicable inspection on building permit program, and been made compliant.

(2) The remaining property owners will be notified by regular mail that in order to receive a certificate of compliance, an inspection is required of any below base flood elevation structures, to verify compliance with the Monroe County floodplain regulations. Owners will also be notified that noncompliant structures may be subject to code compliance proceedings.

(3) If owners seek and obtain a certificate of compliance inspection, and are compliant, they will receive a certificate of compliance as outlined in this section. This is a proactive opportunity for property owners to receive evidence that they have a compliant structure which should, long term, create a positive market condition. If an owner has a noncompliant structure, he will be notified of all the required corrections to the enclosure to become compliant and that permits are required to authorize construction,

(c) Inspections.

Inspections may be conducted for a certificate of compliance according to this chapter for FEMA Insurance Inspection Program or for Inspection of Residential Structures prior to transfer of ownership found in Section 122-6.

(d) Compliant structures.

The county will provide a certificate of compliance to property owners with compliant structures after property owners sign and record a nonconversion agreement (with a corresponding drawing demonstrating the permitted improvements allowed below base flood elevation attached to the agreement). The nonconversion agreement shall be recorded by the county in the Monroe County official land records so future buyers of properties understand what has been approved for areas below base flood elevation. Property owners shall pay recording fees.

(e) Noncompliant structures.

The county Building Official shall refer any noncompliant structures to the Code Compliance Department for enforcement through appropriate processes.

(f) New construction.

New construction that contains any type of below base flood elevation enclosure, will be required to record a "Notice of Non-Conversion" in the Monroe County land records indicating the square footage permitted to be constructed below base flood elevations, with a corresponding drawing demonstrating the permitted improvements permitted, prior to receiving a certificate of occupancy.

Sec. 122-8. Inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) Required Permit Referral Process (PRP) in Final Permit Determinations for Development.

(a) *Purpose and intent.* It is the purpose of Section 122-8 to implement regulations that will assure, consistent with the 10th Amendment to the U.S. Constitution, state and county regulations, proper record retention, coordination, and notification of FEMA and FWS regarding permit applications filed with or issued by Monroe County, inclusive of FEMA/FWS requirements agreed to by the applicant.

(b) *Lands to which this section apply.* See Section 122-2(b)2.

(c) *Rules for interpreting SFAMs.* The boundaries of the flood hazard areas shown on the FWS SFAMs may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the county Planning Director or his/her designee, in consultation with the Building Official.

(d) *Administration of development approval in species focus areas.*

(1) *SFAM review required.* For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains only unsuitable habitat for any of the following species: Key Largo Cotton Mouse, Key Largo woodrat, Key tree-cactus, Lower Keys marsh rabbit, Eastern indigo snake, Key deer, Schaus swallowtail butterfly, silver rice rate, and Stock Island tree snail, and the parcel or lot is not listed on the RE list, the Planning Director or his/her designee shall provide for a notation in the development application permit files that indicates:

a. The name of the official that reviewed the development application for FWS requirements;

b. The date of the review;

c. The date of the SFAM and RE list used to conduct the review.

Once the review has established that a parcel or lot contains unsuitable habitat, action may be taken on the permit application for development by Monroe County staff.

(2) *FWS technical assistance permit requirements.* For parcels or lots shown within the SFAMs in which an application for a permit for development has been made including 1) expanding the footprint of a structure; and/or 2) expanding clearing in habitat (including native vegetation removal); and/or 3) placement of fencing into Key deer habitat, if the SFAM indicates the parcel or lot contains suitable habitat for any of the following species: Key Largo Cotton Mouse, Key Largo wood rat, Key tree-cactus, Lower Keys marsh rabbit, Eastern indigo snake, Key deer, Schaus swallowtail butterfly, silver rice rat, and/or Stock Island tree snail, and the parcel or lot is listed on the RE list, the Planning Director or his/her designee shall use the SAGs to determine whether a floodplain development permit application requires:

a. Incorporation of FWS SAG requirements as conditions into the Monroe County permit and the county may issue the permit, pursuant to all applicable codes; or

b. If, according to the SAGs, the proposed development needs technical assistance by the service, the county may take action on the permit application for entry into ROGO or NROGO and/or shall issue the permit in accordance with Chapter 2012-205, Laws of Florida, indicating a notice to proceed must be obtained prior to any construction, removal of vegetation, or commencement of development, with a condition that:

1. The applicant seek and obtain technical assistance from the service; and

2. The applicant obtain, prior to the issuance of the notice to proceed, all applicable state or federal permits or approvals pursuant to Section 122-2(a); and

3. In accordance with the Florida Building Code and Monroe County Section 6-103(b), the permit shall expire after 180 days; and

4. If the permit expires, the applicant shall be required to reapply for the permit.

c. For a floodplain development permit application that requires the services' technical assistance, Monroe County shall provide the application to the service weekly. Based on the services technical assistance, the applicant shall submit the FWS written requirements to the county. If the applicant agrees to the FWS requirements, in writing, Monroe County may then issue a notice to proceed that includes the technical assistance requirements, provided by the federal

agency to avoid possible impacts on federally listed (threatened or endangered) species, as conditions in the Monroe County permit.

d. For a development permit application that requires mitigation and/or compensation for adverse effects to native habitat, monetary compensation generated will be applied to restoration and/or purchase of native habitat.

e. The county shall maintain an applicant acceptance form, of the service requirements, in the permit file.

f. For purposes of this chapter the notice to proceed shall be written authorization from the Monroe County Growth Management Division to the permittee that the permitted development activities may begin.

g. If the parcel is within an area previously covered by a habitat conservation plan, and where that habitat conservation plan has expired at the time of development permit application, the county shall apply this permit referral process, unless mitigation was completed for the associated impacts.

h. If the property owner does not agree to the FWS technical assistance requirements to be included in the development permit as conditions, the county shall not issue the notice to proceed and shall rescind the previously issued development permit.

i. For properties located in Key Largo wood rat, Key Largo cotton mouse, silver rice rat and Lower Keys marsh rabbit habitat, property owners shall agree to execute and record a covenant restriction in favor of Monroe County which prohibits free ranging cats. This requirement alleviates direct and cumulative loss of species habitat which will not negatively impact the total number of new residential permits that may be issued under Species Assessment Guides (SAGs).

(3) *Provision for flood hazard reduction and avoiding impacts on federally listed (threatened or endangered) species enforcement.* All proposed development shall meet the conditions established on the floodplain development permit and/or notice to proceed, which includes FWS technical assistance requirements included as conditions on the Monroe County development permits, to avoid possible impacts on federally-listed species (threatened or endangered). Violation of this chapter, including any development constructed not in accordance with the FWS requirements, included as conditions on the Monroe County development permit, derived through use of the SAGs or through technical assistance by FWS, are hereby deemed to be violations of the County Code and may be enforced utilizing the administrative enforcement procedures set forth in Chapter 8, Monroe County Code

of Ordinances. Further, Section 118-11 shall be utilized to require environmental restoration standards.

(4) *Permit issuance for previously tolled allocations and annual allocation awards from the Rate of Growth Ordinance (ROGO), Non-Residential Rate of Growth Ordinance (NROGO) allocations or building permits/floodplain development permits.* Building permits and allocations have been tolled under authority of Monroe County Resolutions 420-2005, 166-2006, 185-2007 and 219-2008 and 282-2011 as a result of the injunction prohibiting FEMA from issuing flood insurance policies under the National Flood Insurance Program which was imposed in the case of Florida Key Deer et. al.,v. Fugate et. al., 90-10037-CIV-Moore.

a. In order for those persons whose allocations or whose building permits were tolled to be eligible for federal flood insurance and meet their obligations under the Federal Endangered Species Act, the following is required:

1. Owners with allocations who do not need coordination with FWS after they are processed through the permit referral process:

i. Have 180 days from the date of a county issued written notice to pick up their building permits; or greater

ii. ii. Have 300 days from the date of a county issued written notice, if there is a need to redesign an onsite wastewater treatment system, to receive a permit from the department of health (DOH) and pick up their building permits.

2. Owners with building permits who do not need coordination with FWS after they are processed through the permit referral process:

i. Have 180 days from the date of a county issued written notice, to recommence development and receive a passed inspection; or

ii. Have 300 days from the date of a county issued written notice, if there is a need to redesign an onsite wastewater treatment system to receive a permit from the DOH, recommence development and receive a passed inspection.

(5) *Permit issuance for Annual allocation awards from the Rate of Growth Ordinance (ROGO), Non-Residential Rate of Growth Ordinance (NROGO) allocations.* Permit applications processed through the permit referral process that result in a "may affect determination" for the proposed development through the application of the species assessment guides which require the permittee to coordinate with FWS shall have a total of 360 days from the date of a county issued written notice to conclude the

required coordination with FWS and pick up the building permit, and receive a notice to proceed from Monroe County. This timeframe may be extended by the Planning Director if the applicant submits a written request prior to the expiration of the allocation award and/or the permit and the applicant affirmatively demonstrates that he has timely and actively sought coordination.

(6) Properties for which a permit has been issued and for which development has not commenced will be required to be processed through the permit referral process. Permit reviews that result in a "may affect determination" for the proposed development through the application of the species assessment guides which require the permittee to coordinate with FWS shall have a total of 360 days from the date of a county issued written notice to conclude the required coordination with FWS, commence development and receive a passed inspection from Monroe County. This timeframe may be extended by the Planning Director if the applicant can affirmatively demonstrate that he has timely and actively sought coordination.

Sec. 122-9. Appeals.

(a) *Authority.* The Division of Administrative Hearings (DOAH) shall have the authority to hear and decide appeals from administrative actions regarding the floodplain management provisions of this Land Development Code.

(b) *Initiation.* An appeal may be initiated by an owner, applicant, adjacent property owner, any aggrieved or adversely affected person, as defined by F.S. § 163.3215(2), or any resident of real property, from administrative actions regarding the floodplain management provisions of this Land Development Code.

(c) *Procedures.* A notice of appeal in the form prescribed by the Building Official must be filed with the county administrator and with the Building Department within 30 calendar days of the administrative action. Failure to file such appeal shall constitute a waiver of any rights under this article to appeal administrative actions regarding the floodplain management provisions of this Land Development Code. Such notice shall be accompanied by the names and addresses of the owner, applicant, property owner, and adjacent property owners. The filing of such notice of appeal will require the County to forward to the BOCC any and all records concerning the subject matter of the appeal and to send written notice of the appeal to the owner, applicant, property owner, and adjacent property owners, if different from the person filing the appeal. Upon receipt of the written notice of the appeal, the County shall refer the appeal to DOAH with a request that an administrative law judge be assigned to conduct a hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of County action.

(d) *Effect of filing an appeal.* The filing of a notice of appeal shall stay all permit activity and any proceedings in furtherance of the action appealed unless the Building Official certifies in writing to the BOCC and the applicant that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further permit activity and any proceedings. The BOCC shall review such certification and grant or deny a stay of the proceedings.

(e) *Action of DOAH.* DOAH shall consider the appeal pursuant to Rule 28-106.201(3) F.A.C.

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Chapter 126 IMPACT FEES

Sec. 126-1. Impact Fee Procedures.

The purposes and intent of the impact fee procedures are:

(1) To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new development;

(2) To facilitate implementation of goals, objectives and policies set forth in the Florida Keys Comprehensive Plan and Land Development Regulations relating to ensuring that new impact-producing development contributes its fair share towards the costs of capital improvements reasonably necessitated by such growth;

(3) To ensure that new development is reasonably benefited by capital improvements made with proceeds of impact fees; and

(4) To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

Sec. 126-2. Proportionate Fair-Share Mitigation of Development Impacts on Transportation Facilities.

(a) Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant or *developer* or *owner* means any individual, corporation, business trust, estate trust, partnership, association, two or more persons have a joint or common interest, governmental agency, or any other legal entity, which has submitted an application for a fair share agreement and/or who desires to participate in the fair share program.

Application means an application presented to the county containing the information required pursuant to this chapter.

Capital improvements element (CIE) means the element of the comprehensive plan adopted pursuant to F.S. Chapter 163, pt. II (F.S. § 163.3161 et seq.), which is based on the need for public facilities as identified in the other comprehensive plan elements and as defined in the applicable definitions for each type of public facility, which estimates the cost of improvements for which the local government has fiscal responsibility, which analyzes the fiscal capability of the local government to finance and construct improvements, which adopts financial policies to guide the funding of improvements, and which schedules the funding and construction of improvements in a manner necessary to ensure that capital improvements are provided when required based on needs identified in the other adopted comprehensive plan elements.

Concurrency means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.

Concurrency coordinator means the Director of Planning and Environmental Resources Department or his designee.

Concurrency management system (CMS) means the procedures and/or processes used by the county to ensure that final development orders and final development permits are not issued unless the necessary public facilities to support the development are available concurrent with the impacts of development. The requirements of the concurrency management system are provided for in Policies 1401.4.5, 1401.4.6, 1401.4.7, 1401.4.8, and 1404.9 of the capital improvements element of the Monroe County 2010 Comprehensive Plan.

Department means the county Department of Planning and Environmental Resources.

Deficient roadway means a roadway or segment on the roadway network that is within the traffic impact area of a proposed development, which development:

(1) Would cause the LOS standard for the affected roadway or segment to fall below the minimum accepted level as determined under the county's concurrency management system; or
(2) Has an impact on travel or delay time on an existing deficient roadway. Deficient roadways also include roadways designated as constrained or backlogged.

Future transportation maps means the maps within the map atlas/document adopted in the Monroe County Comprehensive Plan, as the same may be amended from time to time, indicating all freeways, arterial and collector roadways which will provide for adequate traffic circulation within its planning period.

Impacted road segment means any road segment or link on the roadway network that is wholly or partially within the project's traffic impact area.

Roadway network means an interconnected system of freeway, arterial and collector roads identified by the county in its comprehensive plan and concurrency management system for which the level of service standards must be maintained.

Traffic impact area of a particular development means determined by a traffic study, in coordination with the county traffic engineer, from each of the overall development's entrance/connections to a roadway external to the development. If there are no roadways or segments on the roadway network within the defined area, the traffic impact area shall encompass the nearest roadway or link on the roadway network.

Transportation concurrency means that the necessary public facilities and services to maintain the applicable level of service standards for road facilities adopted in Policies 301.1.1 and

301.1.2 of the Monroe County 2010 Comprehensive Plan are available when the impacts of development occur.

(b) Purpose and intent.

The purpose of this chapter is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the proportionate fair-share program, as required by and in a manner consistent with F.S. § 163.3180(6)c.

(c) Applicability.

(1) The proportionate fair-share program shall apply to all developments in the county that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the county's concurrency management system (CMS), including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of subsection (e) of this section.
(2) Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the county's impact fee ordinance.
(3) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the county. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. The county may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation.
(4) The proportionate fair-share program does not apply to developments of regional impact (DRIs) using proportionate fair-share under F.S. § 163.3180(s)(h)1.c., or to developments exempted from concurrency as provided in F.S. § 163.3180(5)(h)1.b., regarding exceptions and de minimis impacts.

(d) General requirements.

(1) An applicant may choose to satisfy the transportation concurrency requirements of the county by making a proportionate fair-share contribution, pursuant to the following requirements:

a. The proposed development is consistent with the comprehensive plan and applicable land development regulations.
b. The five-year schedule of capital improvements in the county's capital-improvements element (CIE) or the longterm schedule of capital improvements for an adopted longterm CMS includes a transportation improvement that, upon completion, will satisfy the requirements of the county transportation CMS. The

provisions of subsection (d)(2) of this section may apply if a project needed to satisfy concurrency is not presently contained within the local government CIE or an adopted longterm schedule of capital improvements.

(2) The county may choose to allow an applicant to satisfy transportation concurrency through the proportionate fair-share program by contributing to an improvement that, upon completion, will satisfy the requirements of the county transportation CMS, but is not contained in the five-year schedule of capital improvements in the CIE or a longterm schedule of capital improvements for an adopted longterm CMS, where the following apply:

a. The county adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or longterm schedule of capital improvements for an adopted longterm CMS no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the appropriate county department, and determined to be consistent with the comprehensive plan, and in compliance with the provisions of this chapter.

b. If the funds allocated for the five-year schedule of capital improvements in the county CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the county may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the county, significantly benefit the impacted transportation system.

c. The improvement funded by the proportionate fair-share component must be adopted into the five-year capital improvements schedule of the comprehensive plan or the longterm schedule of capital improvements for an adopted longterm concurrency management system at the next annual capital improvements element update.

(3) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the county for locally maintained roadways and those of the FDOT for the state highway system.

(e) Intergovernmental coordination.

Pursuant to the intergovernmental coordination policies of the county's comprehensive plan and relevant policies of the South Florida Regional Planning Council's Regional Plan for South Florida, the county shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of county. An interlocal agreement may be established with other affected jurisdictions for this purpose.

(f) Application process.

(1) Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of subsection (d) of this section.

(2) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the strategic intermodal system (SIS), then the FDOT will be notified and invited to participate in the pre-application meeting.

(3) Eligible applicants shall submit an application to the county that includes, but is not limited to, an application fee and the following:

a. The name, address and phone number of the land owner, developer and agent;
b. The property location, including parcel identification numbers;
c. A legal description and survey of property;
d. A project description, including type, intensity and amount of development;
e. The phasing schedule, if applicable;
f. A description of requested proportionate fair-share mitigation methods; and
g. A copy of the concurrency application.

(4) The county's Planning Director shall review the application and certify that the application is sufficient and complete within ten business days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the proportionate fair-share program as indicated in subsection (d) of this section, then the applicant will be notified in writing of the reasons for such deficiencies within ten business days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The BOCC may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(5) Pursuant to F.S. § 163.3180(5)(h)1.a., proposed proportionate fair-share mitigation for development impacts to transportation facilities on U.S. 1 requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(6) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the county or the applicant with direction from the county and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on U.S. 1, no later than 60 days from the date at which the applicant received the notification of a sufficient

application and no fewer than 14 days prior to the BOCC meeting when the agreement will be considered.

(7) The county shall notify the applicant regarding the date of the BOCC meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the BOCC.

(g) Determining proportionate fair-share obligation.

(1) Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.

(2) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation, pursuant to F.S. § 163.3180(6)(c).

(3) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in F.S. § 163.3180(5)(h)1.c., as follows:

The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS;

Or

Proportionate fair-share = σ [[(Development trips;sub\sub;)/(SV increase;sub\sub;)] × Cost;sub\sub;]

Where:

Development trips;sub\sub; = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS;

SV increase;sub\sub; = Service volume increase provided by the eligible improvement to roadway segment "i" per subsection (d) of this section;

Cost;sub\sub; = Adjusted cost of the improvement to segment "i." Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

(4) For the purposes of determining proportionate fair-share obligations, the county shall determine improvement costs based upon the actual cost of the improvement as obtained from the CIE or the FDOT work program. Where such information is not available, improvement cost shall be determined using one of the following methods:

a. An analysis by the county of costs by cross section type that incorporates data from recent projects and is updated and approved by the BOCC. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor; or

b. The most recent issue of FDOT transportation costs, as adjusted based upon the type of cross section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of material due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT work program shall be determined using this method in coordination with the FDOT district.

(5) If the county has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.

(6) If the county has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the nonsite related right-of-way shall be valued on the date of the dedication at 120 percent of the most recent assessed value by the county property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the county and at no expense to the county. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the county at no expense to the county. If the estimated value of the right-of-way dedication proposed by the applicant is less than the county estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

(h) Impact fee credit for proportionate fair-share mitigation.

(1) Proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the county's impact fee ordinance.

(2) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the proportionate fair-share agreement as they become due per the county impact fee ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under

review, then the applicant or its successor must pay the remaining impact fee amount to the county pursuant to the requirements of the county impact fee ordinance.

(3) Major projects not included within the county's impact fee ordinance or created under subsections (d)(2)a. and (d)(2)b. of this section, which can demonstrate a significant benefit to the impacted transportation system may be eligible at the county's discretion for impact fee credits.

(4) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the local impact fee ordinance.

(i) Proportionate fair-share agreements.

(1) Upon execution of a proportionate fair-share agreement the applicant shall receive a county certificate of concurrency approval. Should the applicant fail to apply for a development permit within 12 months or timeframe provided in the local CMS of the execution of the agreement, then the agreement shall be considered null and void, and the applicant shall be required to reapply.

(2) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than 12 months from the date of execution of the agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to subsection (g) of this section and adjusted accordingly.

(3) All developer improvements authorized under this chapter must be completed prior to issuance of a development permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before issuance of building permits or certificates of occupancy.

(4) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.

(5) Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.

(6) Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the county will be nonrefundable.

(7) The county may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

(j) Appropriation of fair-share revenues.

(1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the county CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the county, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50 percent local match for funding under the FDOT TRIP.

(2) In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of subsection (d)(2)b. of this section.

(3) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in F.S. § 339.155 and then the county may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT trip. Such coordination shall be ratified by the county through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

(4) Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under subsection (g) of this section, the county shall reimburse the applicant for the excess contribution using one or more of the following methods:

a. An impact fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned and reassigned under the terms and conditions acceptable to the county.

b. An account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fair-share payments from future applicants on the facility.

c. The county may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the county and the applicant.

(k) Cross jurisdictional impacts.

(1) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the county may enter an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.

(2) A development application submitted to the county subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:

a. All or part of the proposed development is located within a segment of the traffic impact area which is under the jurisdiction, for transportation concurrency, of an adjacent local government;
b. Using its own concurrency analysis procedures, the county concludes that the additional traffic from the proposed development would use five percent or more of the reserve speed of a regional transportation facility within the concurrency jurisdiction of the adjacent local government impacted regional facility; and
c. The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.

(3) Upon identification of an impacted regional facility pursuant to subsections (k)(2)a.—(k)(2)c. of this section, the county shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.

a. The adjacent local government shall have up to 90 days in which to notify the county of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of F.S. § 163.3180(6)c. Should the adjacent local government decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the county.
b. If the subject application is subsequently approved by the county, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied. The county may require the adjacent local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

Sec. 126-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means and refers to the property owner, or duly designated agent of the property owner, of land on which a request for a building permit is received by the county and on which

an impact fee is due or has been paid. See Section 101-1 for the comparable definition of "feepayer."

Appropriation or *to appropriate* means and refers to an action by the board to identify specific capital improvements for which impact fee funds may be used. The term "appropriation" includes, but shall not necessarily be limited to: inclusion of a capital improvement in the adopted county budget, capital improvements program or county road plan; execution of a contract or other legal encumbrance for a capital improvement using impact fee funds in whole or in part; and actual expenditure of impact fee funds through payments made from an impact fee account.

Capital improvements means and refers to those improvements as defined in Section 101-1, "capital improvements," and those improvements related to fire protection service, and expressly includes amounts appropriated in connection with the planning, design, engineering and construction of such improvements; planning, legal, appraisal and other costs related to the acquisition of land, financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the capital improvement. Capital improvements eligible for impact fee funding, in whole or in part, shall be set forth in greater detail in the resolutions adopting the specific impact fee schedules.

Commercial retail use means and refers to uses that sell goods or services at retail as that term (commercial retail use) is defined in Section 101-1.

District or *impact fee district* means and refers to a defined geographic area or subarea of the county within which impact fees are collected, appropriated, and expended for capital improvements serving new development within such area or subarea.

Dwelling unit means and refers to those residential units as that term (dwelling units) is defined in Section 101-1. The term "dwelling unit" is applicable to both permanent and transient residential development.

Governmental agency means those entities listed in the definition of "governmental agency" in Section 101-1.

Impact fee means and refers to a monetary exaction imposed on a pro rata basis in connection with and as a condition of development approval and calculated to defray all or a portion of the costs of capital improvements required to accommodate new impact-producing development and reasonably benefiting the development.

Impact fee district maps means and refers to the maps defining the geographical extent of the impact fee districts and subdistricts for each adopted impact fee.

Impact-producing means and refers to any development that has the effect of:

(1) Increasing the need or demand for a capital improvement;
(2) Utilizing existing capital improvement capacity; or
(3) Causing an existing capital improvement level of service standard to decline.

Industrial use means and refers to uses devoted to manufacturing and related operations as that term is defined in Section 101-1 and expressly includes heavy industrial uses as that term is defined in Section 101-1 and light industrial uses as that term is defined in Section 101-1.

Institutional use means and refers to uses that serve the community as the term is defined in Section 101-1 and expressly includes hospitals.

Multiple uses means and refers to a development consisting of both residential and nonresidential uses or one or more different types of nonresidential uses on the same site or part of the same development project.

Nonresidential development means and refers to commercial retail use as defined in Section 101-1; marinas as defined in Section 101-1; destination resort as that term is defined in Section 101-1; hotel use as that term is defined in Section 101-1; room, hotel or motel as those terms are defined in section 101-1; industrial use as that term is defined in Section 101-1 as "industrial use," "heavy industrial use" and "light industrial use"; institutional uses as defined in Section 101-1; office use as defined in Section 101-1; shopping centers as defined in Section 101-1 and public buildings as defined in Section 101-1.

Office means and refers to a use where business, professional or governmental services are made available to the public as that term is defined in Section 101-1.

Participating municipality means a municipality participating in the county impact fee system pursuant to an interlocal agreement with the county.

Public buildings means those buildings and uses as defined in Section 101-1.

Residential development means and refers to a residence or residential use as that term is defined in Section 101-1; dwelling units as that term is defined in Section 101-1; campground spaces as defined in Section 101-1; mobile homes as defined in Section 101-1; institutional residential use as defined in Section 101-1, except hospitals; live-aboard vessels as defined in section 101-1; employee housing as defined in Section 101-1; permanent residential unit as that term is defined in Section 101-1; and affordable housing as that term is defined in Section 101-1.

Shopping center means and refers to commercial retail and professional services developments as defined in Section 101-1.

Tourist housing development means and refers to the development of tourist housing units as that term is defined in Section 101-1.

Sec. 126-4. General Provisions; Applicability.

(a) Term.

This chapter shall remain in effect unless and until repealed, amended or modified by the board in accordance with applicable state law and local ordinances and procedures.

(b) Annual review.

(1) At least once every year prior to board adoption of the annual budget and capital improvements program, the Planning Director shall prepare a report on the subject of impact fees.

(2) The report shall include the following:

a. Recommendations on amendments, if appropriate, to this chapter or to resolutions imposing and setting specific impact fees for particular categories of capital improvements;

b. Proposed changes to the capital improvements element and/or an applicable capital improvements program, including the identification of capital improvement projects anticipated to be funded wholly or partially with impact fees;

c. Proposed changes to the boundaries of impact fee districts or subdistricts;

d. Proposed changes to impact fee schedules as set forth in the resolutions imposing and setting specific impact fees;

e. Proposed changes to levels of service;

f. Proposed changes in calculation methodology; and

g. Other data, analysis or recommendations as the Planning Director may deem appropriate, or as may be requested by the board.

(3) The Planning Director shall submit the impact fee annual report to the Planning Commission, which shall receive the report and take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

(4) The Planning Commission shall attach its recommendations to the annual report and forward the report and recommendations to the board.

(c) Effect of annual review.

This annual review may, in whole or in part, form the basis for county recommendations to the BOCC and board actions to repeal, amend or modify this chapter and/or fee schedules; however, the county may cite and the board may rely upon such other data, information, reports, analyses and documents relevant to such decisions as may be available.

(d) Amendments.

Changes to this chapter must be made by ordinance; changes to resolutions imposing and establishing specific impact fee schedules may be made by resolution of the board. Nothing herein precludes the BOCC or limits its discretion to amend this chapter or the resolutions imposing specific impact fee schedules at such other times as may be deemed necessary.

(e) Affected area.

(1) Impact fee district.

Impact fees shall be imposed on impact-producing development within the county impact fee district, comprising the entire area of the county, excluding the cities of Key West and Layton, which, for purposes hereof, has been divided into impact fee subdistricts as follows:

a. Upper Keys impact fee subdistrict: the area of the county north of Fiesta Key, excluding the City of Layton.
b. Middle Keys impact fee subdistrict: the area of the county and including Fiesta Key south to Seven Mile Bridge (MM 40).
c. Lower Keys impact fee subdistrict: the area of the county south of Seven Mile Bridge (MM 40), excluding the City of Key West.

(2) Municipalities.

Impact fees adopted by the county may be imposed by a participating municipality on new development within the municipality pursuant to an interlocal agreement with the county that provides that the municipality retains a portion of the impact fees collected and remits the remainder of the fees to the county. The fees retained by the municipality must be expended in a manner consistent with this chapter. The interlocal agreement must provide that the municipality keep records of the impact fee expenditures according to generally accepted governmental accounting principles and to make those records available to an auditor employed by the county upon reasonable request.

(3) Map.

The affected area, including impact fee districts and participating municipalities, shall be shown on the impact fee district map, which is attached hereto as Appendix A, and which is hereby adopted by reference and incorporated herein as though fully set forth. The impact fee district map shall be identified by the signature of the mayor/chair of the BOCC and shall bear the seal of the county, and the date of adoption of Ordinance No. 33-1992 [October 16, 1992].

(4) Change in boundaries of impact fee districts.

The board may amend the boundaries of the impact fee districts pursuant to subsection (d) of this section at such times as may be deemed necessary to carry out the purposes and intent of this chapter and applicable legal requirements for use of impact fees. In the event of annexation of unincorporated county land by a municipality, the unincorporated county impact fee boundaries shall be deemed to have been changed by operation of law, without action of the board; however, following the annual review, the board shall cause the map to be changed to reflect the new impact fee district boundaries.

(f) Type of development affected.

This chapter shall apply to all impact-producing residential and nonresidential development for which a building permit is required by this chapter and which building permit has not been issued prior to the effective date of adoption of Section 126-1, except as provided in subsections (h) and (i) of this section.

(g) Effect on development with building permits.

Impact-producing residential and nonresidential development for which a building permit has been issued prior to the effective date of adoption of Section 126-1, but for which neither issuance of a certificate of occupancy has occurred nor payment of applicable impact fees has been made, shall be subject to payment of applicable impact fees pursuant to Sections 126-8 through 126-13; however, within two years of the effective date of adoption of Section 126-1, the applicant, at his option, may elect to come within the confines of Section 126-1 and the resolutions implementing the impact fees authorized pursuant to that section. If the applicant elects the Section 126-1 alternative, he will be subject to all applicable impact fees as provided therein and in the implementing resolutions.

(h) Type of development not affected.

(1) Replacement residential units. Redevelopment or rehabilitation which replaces but which does not increase the number of legally permitted dwelling units above that existing on the site prior to redevelopment or rehabilitation.
(2) Replacement nonresidential developments. Redevelopment or rehabilitation which replaces, but which does not increase the legally permitted floor area above that existing on the site prior to redevelopment or rehabilitation nor changes the use to one which has a greater impact-producing effect with respect to any capital improvement than that existing on the site prior to redevelopment or rehabilitation.
(3) Public capital improvements (as defined in Section 101-1).
(4) Public buildings (as defined in Section 101-1) owned and operated by a governmental agency which is statutorily exempt from the payment of locally-adopted impact fees.
(5) Any other use, development, project, structure, building, fence, sign or other activity that is not impact-producing.
(6) Affordable or employee housing units (as defined in Section 101-1) for which a deferred payment of impact fees has been recorded in the chain of title.

(i) Minimum fee requirements.

Upon receipt of an application, the Planning Director is hereby authorized to establish a minimum fee requirement not less than the amount which would be imposed on 1,000 square feet of building space of industrial development, for certain proposed nonresidential developments upon a finding that:

(1) The impact produced by the proposed use is de minimis;
(2) The proposed use is not included in the applicable impact fee schedule nor is it similar to any listed use; and
(3) The cost of an individual impact analysis would outweigh the impact fee otherwise calculated to be due.

The burden shall be on the applicant to establish that the required findings as set forth in this subsection (i) will be met with respect to the proposed use.

(j) Effect of payment of impact fees on a determination of concurrency; a dwelling unit allocation; and other land development regulations.

(1) The payment of impact fees shall not entitle the applicant to a determination of concurrency except as otherwise provided in this chapter. The requirements for a determination of concurrency is a separate, independent and additional requirement imposed by this chapter.
(2) The payment of impact fees shall not entitle the applicant to a dwelling unit allocation award pursuant to Chapter 138, Articles II and III. The requirement for a dwelling unit allocation award is a separate, independent and additional requirement imposed by this chapter.
(3) Neither this chapter nor the specific impact fee resolutions shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of this chapter, all of which shall be operative and remain in full force and effect without limitation.

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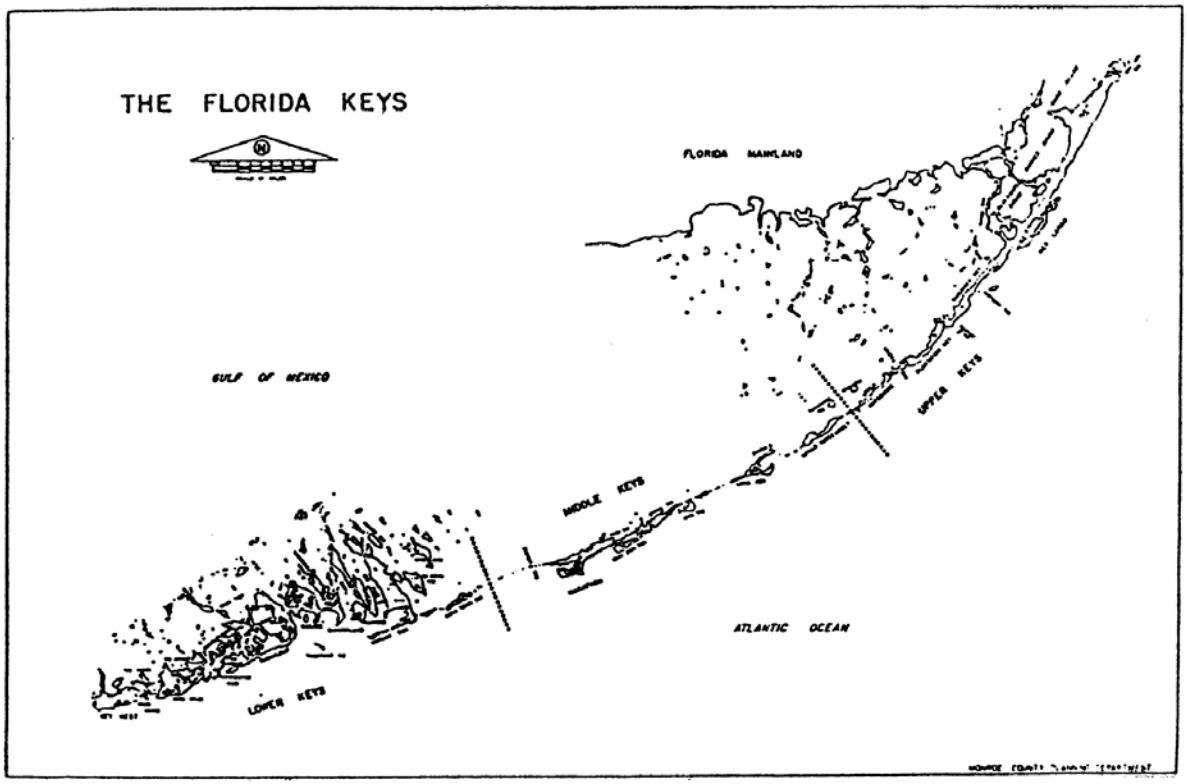
APPENDIX A. IMPACT FEE SUBDISTRICTS



Sec. 126-5. Procedures for imposition, calculation and collection of impact fees.

(a) Imposition.

After the effective date of Section 126-1, no building permit shall be issued by the county for impact-producing residential or nonresidential development unless the applicant has paid the applicable impact fees in accordance with the procedures and requirements provided in this section.

(b) Calculation.

(1) Upon receipt of an application for a building permit, the Planning Director shall determine whether the proposed project is impact-producing and, if so:

a. Whether it is residential or nonresidential;
b. The specific category of residential or nonresidential development;
c. If residential, the number of dwelling units;
d. If nonresidential, the number of square feet of floor area; and

e. The impact fee district in which the proposed project is located.

(2) After making these determinations, the Planning Director shall calculate the demand for capital improvements added by the proposed project and calculate the applicable impact fee by multiplying the demand of the proposed project by the impact fee per demand unit in effect at the time of building permit issuance, less any applicable credit.

(3) If the type of land use proposed for development is not expressly listed in the specific impact fee resolution, the Planning Director shall:

a. Identify the most similar land use type listed and calculate the impact fee based on the impact fee per demand unit for that land use; or

b. Identify the broader land use category within which the specific land use would fit and calculate the impact fee based on the impact fee per demand unit for that land use category.

(4) If neither of the alternatives set forth in subsection (b)(3)a. or (b)(3)b. of this section is appropriate for the proposed development, the demand may be determined by an individual impact analysis performed by the applicant if authorized by the specific impact fee resolution and if requested by the applicant and approved by the Planning Director or if requested by the Planning Director. Any individual impact analysis shall conform to the requirements of the applicable impact fee resolution and subsection (e) of this section.

(5) An applicant may request a nonbinding estimate of impact fees due for a particular development at any time.

(6) The calculation of impact fees due from a multiple-use development shall be based upon the aggregated demand for each capital improvement generated by each land use type in the proposed development.

(7) The calculation of impact fees due from a phased development shall be based upon the demand generated by each specific use for which a separate building permit application is received.

(8) All impact fees shall be calculated based on the impact fee per demand unit in effect at the time of building permit issuance.

(c) Credits.

(1) Credits against the amount of an impact fee due from a proposed development shall be provided for the dedication of land and/or the provision of capital improvements by an applicant when such land or capital improvements provide additional capacity to meet the demand generated by the development and when either:

a. The costs of such land or improvements have been included in the fee calculation methodology for the applicable category of capital improvement; or

b. The land dedicated or capital improvement provided is determined by the Planning Director to be a reasonable substitute for the cost of improvements that are included in the applicable fee calculation methodology.

(2) Credit applications shall be made on forms provided by the county and shall be submitted at or before the time of building permit application. The application shall be accompanied by relevant documentary evidence indicating the eligibility of the applicant for the credit. When a credit application accompanies a building permit application, the Planning Director shall calculate the applicable impact fee without the credit and shall then determine whether a credit is due and, if so, the amount of the credit. The credit shall be applied against the impact fee calculated to be due; however, in no event shall a credit be granted in an amount exceeding the impact fee due.

(3) Credit for dedication of land or provision of capital improvements shall be applicable only against impact fees for the same category of capital improvements. Even if the value of the dedication of land or provision of a capital improvement exceeds the impact fee due for that capital improvement category, the excess value may not be transferred to impact fees calculated to be due from the applicant for other categories of capital improvements nor may the excess value be transferred to other applicants or properties.

(d) Collection.

The Planning Director shall collect all applicable impact fees at the time of building permit issuance unless:

(1) The applicant is determined to be entitled to a full credit;
(2) The applicant is not subject to the payment of impact fees; or
(3) The applicant has taken an appeal and a bond or other surety in the amount of the impact fee, as calculated by the Planning Director, has been posted with the county.

(e) Individual impact analysis.

(1) The applicant may request, and the Planning Director may approve or require the submittal by the applicant of an individual impact analysis if the proposed impact-producing development is a land use type generating unusual demand for one or more types of capital improvements or is a land use type for which the county does not have adequate and current demand data.

(2) An individual impact analysis shall include:

a. The application for building permit, including all information described in subsection (b)(1) of this section;
b. The demand generated by the impact-producing development and the methodology used to calculate the demand;

c. Copies of any recorded conditions on the subject property operating to limit the demand for capital improvements generated by the proposed development;
d. Information and data that may be required by a specific impact fee resolution; and
e. Any additional information, data or analysis deemed necessary by the Planning Director.

(3) If authorized or required by the Planning Director, the individual impact analysis may be submitted by the applicant at the time of building permit application or within a time period established by the Planning Director.
(4) All costs of the preparation, submittal and review of an individual impact analysis, whether prepared at the request of the applicant or required by the Planning Director, and whether performed by the county, the applicant, or a consultant, shall be borne by the applicant. These costs shall be itemized by the county and paid by the applicant upon completion of the individual impact analysis, but in no event later than at building permit issuance. The costs incurred shall be charged to the applicant regardless of whether the applicant proceeds to building permit issuance or whether the demand as calculated in the individual impact analysis is accepted or rejected by the Planning Director.
(5) Within 30 days of the receipt of an individual impact analysis, the Planning Director shall provide a written determination of the demand generated by the proposed development and may:

a. Find that the impact fee shall be calculated based on the demand as set forth in the individual impact analysis;
b. Find that the impact fee shall be calculated based on the demand, as set forth in the individual impact analysis, as modified by the Planning Director; or
c. Find that the individual impact analysis does not support a different demand and, therefore, that the impact fee should be calculated based on the demand as calculated pursuant to the specific impact fee resolution.

The findings of the Planning Director shall be set forth in writing and shall be provided to the applicant.

Sec. 126-6. Establishment of Impact Fee Accounts; Appropriation of Impact Fee Funds; Refunds.

(a) Impact fee accounts.

An impact fee account shall be established by the county for each category of capital improvements for which impact fees are imposed. Subaccounts shall be established for individual impact fee districts. All impact fees collected by the county shall be deposited into the appropriate impact fee account or subaccount, which shall be interest-bearing accounts. All interest earned shall be considered funds of the account. The funds of these accounts shall not be commingled with other funds or revenues of the county. If an impact fee account has previously

been established pursuant to a separate ordinance for deposit of impact fee funds, such account shall be deemed to be an impact fee account pursuant to this section. The county shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited and appropriated in accordance with this chapter and other applicable legal requirements.

(b) Appropriation of impact fee funds.

(1) Generally.

Impact fee funds may be appropriated for capital improvements and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the county to finance such capital improvements.

(2) Restrictions on appropriations.

Impact fees shall be appropriated only:

a. For the category of capital improvement for which they were imposed, calculated and collected;
b. Within the impact fee subdistrict where collected unless the impact fee funds will be appropriated for a capital improvement necessitated by or serving the proposed development as provided herein; and
c. Within six years of the beginning of the fiscal year immediately succeeding the date of collection, unless such time period is extended as provided herein.

Impact fees shall not be appropriated for funding maintenance or repair of capital improvements nor for operational expenses.

(3) Appropriation of impact fee funds outside of district where collected.

Impact fee funds may be appropriated for a capital improvement located outside of the subdistrict where collected if the demand for the capital improvement is generated in whole or in part by the development or if the capital improvement will serve the development.

(4) Appropriation of impact fee funds beyond six years of collection.

Notwithstanding subsection (d) of this section, impact fee funds may be appropriated beyond six years from the beginning of the fiscal year immediately succeeding the date of collection if the appropriation is for a capital improvement which requires more than six years to plan, design and construct and the demand for the capital improvement is generated in whole or in part by the development or the capital improvement will serve the proposed development.

(c) Procedure for appropriation of impact fee funds.

(1) The county, as part of the annual budget and capital improvements programming process, shall each year identify capital improvement projects anticipated to be funded in whole or in part with impact fees. The capital improvement recommendations shall be based upon the impact fee annual review set forth in Section 126-4(b) and such other information as may be relevant.
(2) The recommendations shall be consistent with the provisions of this chapter, the specific impact fee resolutions, applicable legal requirements, and guidelines to be adopted by the board.
(3) The board may include impact-fee-funded capital improvements in the adopted annual budget and capital improvements program. If included, the capital improvement description shall specify the nature of the improvement, the location of the improvement, the capacity to be added by the improvement, the service area of the improvement, the need/demand for the improvement and the timing of completion of the improvement.
(4) The board may recommend impact-fee-funded capital improvements at such other times as may be deemed necessary and appropriate. Such improvements shall also be described, as set forth in subsection (c) of this section, on a project description sheet.
(5) The board shall verify that adequate impact fee funds are or will be available from the appropriate impact fee accounts for the capital improvements.

(d) Refunds.

(1) An applicant who has paid an impact fee for a proposed development for which the applicable building permit has expired or has been revoked pursuant to chapter 102, article VII shall be eligible to apply for a refund of impact fees paid.
(2) An applicant who has paid an impact fee for a proposed development for which a building permit has been issued and construction initiated, but which is abandoned prior to issuance of a certificate of occupancy shall not be eligible for a refund unless the uncompleted building is completely demolished pursuant to a county demolition permit.
(3) The current property owner may apply for a refund of impact fees paid by an applicant if the county has failed to appropriate the impact fees collected from the applicant within the time limits established in subsections (b)(2) and (b)(4) of this section.
(4) Refunds shall be made only to the current owner of property on which the impact-producing development was proposed or occurred.
(5) Applications for refunds due to the abandonment of a development shall be made on forms provided by the county and shall be made within 60 days following the expiration or revocation of the building permit or demolition of the structure. The applicant shall submit:

a. Evidence that the applicant is the property owner or the duly designated agent of the property owner;

b. The amount of the impact fees paid by capital improvements category and receipts evidencing such payments; and
c. Documentation evidencing the expiration or revocation of the building permit or demolition of the structure pursuant to a valid county-issued demolition permit.

Failure to apply for a refund within 60 days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. Upon receipt of a complete application for refund, the Planning Director, within 60 days, shall review the application and documentary evidence submitted by the applicant and make a determination of whether a refund is due. Refunds by direct payment shall be made within 60 days following an affirmative determination by the Planning Director. No interest shall be paid by the county with such refunds.

(6) Applications for refunds due to the failure of the county to appropriate fees collected from the applicant within the time limits established in subsections (b)(2) and (b)(4) of this section shall be made on forms provided by the county and shall be made within one year following the expiration of such time limit. The applicant shall submit:

a. Evidence that the applicant is the property owner or the duly designated agent of the property owner;
b. The amount of the impact fee paid and the capital improvement category for which a refund application is being made;
c. Receipts evidencing the impact fee payments; and
d. Description and documentation of the county's failure to appropriate impact fee funds for relevant capital improvements.

Upon receipt of a complete application for refund, the Planning Director shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination of whether a refund is due within 60 days. Refunds by direct payment shall be made within 60 days following an affirmative determination by the Planning Director. Refunds shall include a pro rata share of interest earned by the applicable impact fee account calculated at the average annual rate of interest for each of the years during which the applicant's impact fees were in the account divided by the number of years in which the fees were in the account.

(7) The county may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same category of capital improvements for development on the same property, or by other means subject to agreement with the property owner.

Sec. 126-7. Appeals.

(a) An appeal from any decision of the Planning Director pursuant to this chapter shall be made to the Planning Commission in accordance with Section 102-185; however, notwithstanding Section 102-185(d), if the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the county attorney in an amount equal to the impact fee as calculated by the Planning Director to be due, the building permit shall be issued. The filing of an appeal shall not stay the collection of the impact fee as calculated by the Planning Director unless a bond or other sufficient surety has been provided.

(b) The burden of proof shall be on the appellant to demonstrate that the decision of the Planning Director is erroneous.

Sec. 126-8. Fair Share Transportation Impact Fee.

(a) Purpose and authority.

(1) The BOCC has determined and recognized that the growth rate the county will experience through the year 2005 will necessitate a significant number of major road network improvements which make it necessary to regulate new land development activity generating traffic in order to increase the capacity of the county's major road network system to maintain an acceptable level of service as determined on the basis of an average annual basis.

(2) In order to finance these new capital improvements, regulate traffic generation levels, and ensure that accommodating that growth is economically feasible, several combined methods of financing will be necessary, one of which will require all new land development activity generating traffic to pay its pro rata share of the capital expansion costs that will be incurred to expand the county's major road network system.

(3) Implementing such a regulatory scheme that requires a new land development activity generating traffic to pay a fair share fee, that does not exceed a pro rata share of the reasonably anticipated expansion costs of new roads created by the new land development activity, is the responsibility of the county pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.) and is in the best interest of the public's health, safety and welfare.

(4) Providing and regulating arterial and other roads and related facilities to make them more safe and efficient, in coordination with a plan for the control of traffic, is also the recognized responsibility of the county through F.S. § 125.01(1)(m) and is in the best interest of the public's health, safety and welfare.

(5) It is not the purpose of this section to collect any money from new land development activity generating traffic in excess of the actual amount necessary to offset the demand on the county's major road network system generated by the new land development activity. Existing residents will still be required to bear their appropriate share of the cost of the county's major road network system.

(b) Payment of fair share fee prior to issuance of certificate of occupancy.

A fair share transportation fee shall be paid by any person, including any governmental agency, prior to receiving a certificate of occupancy for any new land development activity generating traffic that creates increased demand on the county's major road network system.

(c) Establishment of fee schedule.

Any person who shall initiate any new land development activity generating traffic, shall pay, prior to the issuance of a certificate of occupancy, either an alternate fee amount based upon the preparation of traffic impact analysis pursuant to subsection (d) of this section or, a fair share transportation fee as established by resolution of the BOCC.

(d) Individual assessment of impact of land development activity on the major road network.

The traffic impact analysis:

(1) Any person who shall initiate any land development activity generating measurable traffic may choose to provide an individual assessment of the demand the proposed land development activity will place on the county's major road network system in order to show that the capital expansion costs necessitated by the proposed land development activity are less than the fair share fee established in subsection (c) of this section.
(2) The individual assessment shall be undertaken through the submission of a traffic impact analysis that shall include the following information:

a. The projected trip generation rates for the proposed land development activity, on an average annual basis, and at a peak design hour basis. The trip generation rates for the same or similar land use types, or state or national trip generation rate information, if applicable;
b. The proposed trip length, trip distribution, and traffic assignment of the trips generated from the proposed land development activity onto the county's major road network system. Trip length information shall be based upon local empirical surveys of similar land use types or trip length data compiled by the county Planning Director for average trip length for similar land use types. Trip distribution information shall be based upon the existing physical development activity, and projections of population and physical development consistent with the county's comprehensive plan;
c. The traffic assignment of trips generated by other approved land development activity in the area on the county's major road network system;
d. An assessment of the capital expansion of the county's major road system necessitated by the proposed land development activity if it is to be maintained at level of service D on an average annual basis. Needed improvements shall be determined through the end of a 20-year time horizon beginning with the year the project is built out or completed. Standard acceptable practices and

methodological procedures in the transportation planning and engineering profession shall be used to determine the capital expansion of the county's major road network system necessitated by the proposed land development activity;

e. An assessment of the costs of providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in the county for the construction of a lane mile, and shall include related right-of-way costs, and the planning, design and engineering costs for the necessary capital improvements;

f. An assessment of the projected tax revenues that will be derived from the proposed land development activity that can be reasonably determined to be available to pay for new capital improvements to the county's major road network system over the planning horizon; and

g. The amount of any shortfall between the projected tax revenues and the capital expansion costs for the major road network system necessitated by the new land development activity. Any shortfall shall be considered the proposed fair share transportation fee.

(3) The traffic impact analysis shall be prepared by qualified professionals in the field of transportation planning and engineering, impact analysis and economics, and shall be submitted to the Planning Director.

(4) Within 20 working days of receipt of a traffic impact analysis, the county Planning Director shall determine if it is complete. If the county Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the county Planning Director shall take no further action on the traffic impact analysis.

(5) When the county Planning Director determines the traffic impact analysis is complete, he shall review it within 20 working days, and shall approve the proposed fee if it is determined that the traffic information, traffic factors, and methodology used to determine the proposed fair share transportation fee are professionally acceptable and fairly assess the costs for capital improvements to the county's major road network that are necessitated by the proposed land development activity if the road network is to be maintained at level of service D on an average annual basis. If the county Planning Director determines the traffic information, traffic factors and methodology is unreasonable, the proposed fee shall be denied, and the developer shall pay the fair share transportation fee as established in subsection (c) this section.

(6) Any person may appeal the county Planning Director's decision on a traffic impact analysis by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in this subsection.

(e) Time and amount of payment.

No certificate of occupancy shall be issued until any applicable fair share transportation fee is paid. If, in the time between the date of the building permit application and the date of the

request for a certificate of occupancy, the applicable fair share transportation fee amount is altered, the fee due shall be the lower of the two amounts.

(f) Interpretation of the section and fee schedule.

(1) Interpretation of all provisions of this section, including whether a proposed land development activity is identified in one of the land use types in the fee schedule established in subsection (c) of this section, shall be made by the county Planning Director.
(2) Any person who shall initiate any land development activity not identified in the fee schedule established in subsection (c) of this section shall submit a traffic impact analysis to the county Planning Director for a determination of the fair share transportation fee for the proposed land development activity.
(3) The traffic impact analysis shall include the information outlined in subsection (d) of this section and shall be reviewed in accordance with subsection (d) of this section.
(4) If the county Planning Director determines the traffic information, traffic factors and methodology used in the traffic impact analysis is unreasonable, he shall establish a fair share transportation fee for the proposed land development activity that is consistent with the cases of Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976) and Home Builders and Contractors Association of Palm Beach County v. the Board of County Commissioners of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1983) and the standards and criteria established in this section.
(5) Any person may appeal the county Planning Director's determination of the fair share transportation fee on any traffic impact analysis they submit by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (d) of this section.

(g) Credits to the fair share transportation fee.

(1) The county Planning Director shall grant a credit against any fair share transportation fee imposed by this section upon any new land development activity generating traffic where the person initiating the land development activity has entered into an agreement with the county to construct capital roadway improvements which expand the county's major road network by providing roadway improvements that are consistent with the comprehensive plan. A credit equal to the dollar value of the capital road improvement in the agreement shall be provided. No credit shall exceed the fair share transportation fee imposed by this section for the proposed land development activity.
(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the county Planning Director, which agreement shall include the following information:

a. A proposed plan of specific roadway improvements, prepared and certified by a duly qualified and licensed state road engineer; and

b. The projected costs for the suggested roadway improvements, which shall be based on local information for similar transportation improvements, along with the construction timetable for the completion thereof. Such estimated costs shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.

(3) The proposed credit agreement shall be prepared by qualified professionals in the fields of transportation planning and engineering, impact analysis and economics.

(4) Within 20 working days of receipt of the proposed credit agreement, the county Planning Director shall determine if the proposal is complete. If it is determined that the proposed agreement is not complete, the county Planning Director shall send a written statement to the applicant outlining the deficiencies. The county Planning Director shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(5) Once the county Planning Director determines the credit agreement is complete, he shall review it within 20 working days and shall approve the proposed credit agreement if it is determined that the proposed capital roadway improvement is consistent with the capital improvements in the comprehensive plan for the county's major road network and the proposed costs for the suggested roadway improvement are professionally acceptable and fairly assess the cost for the capital improvement. If the county Planning Director determines that either the suggested capital improvement is not consistent with the proposed roadway improvement outlined in the comprehensive plan or that the proposed costs are not acceptable, he shall propose a suggested roadway improvement similar to that proposed, but consistent with the provisions of this section.

(6) If the proposed credit agreement is approved by the county Planning Director or if the recommended credit agreement is accepted by the applicant, a credit agreement shall be prepared and signed by the applicant and the county. It shall specifically outline the capital roadway improvements that will be constructed by the applicant, the time by which it shall be completed, and the dollar credit the applicant shall receive for construction of the capital roadway improvement.

(7) Any person may appeal the county Planning Director's decision on any credit agreement he submits, by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (c) of this section.

(h) Review of the fee schedule.

Prior to the adoption of the annual budget, the BOCC shall receive a report from the county Planning Director on the fair share transportation fee schedule in subsection (c) of this section and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to population projections, travel characteristics, road costs, inflation and other relevant factors.

(i) Use of funds collected.

(1) The county shall establish an appropriate accounting mechanism for ensuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the county's major road network system.
(2) Three accounts shall be established, one for each subdistrict as shown in appendix A to the ordinance from which this chapter is derived; and fees collected pursuant to this section shall be paid into the accounts established for the subdistrict in which the new land development activity is proposed.
(3) Expenditure of fair share fees and trust accounts shall be as follows:

a. The funds collected by reason of the establishment of the fair share transportation fee shall be used solely for the purpose of acquisition, expansion and development of the major road network system determined to be needed to serve new development, including, but not limited to:

1. Planning, design and construction plan preparation;
2. Right-of-way acquisition;
3. Construction of new through lanes;
4. Construction of new turn lanes;
5. Construction of new bridges;
6. Construction of new drainage facilities in conjunction with new roadway construction;
7. Purchase and installation of traffic signalization;
8. Construction of new curbs, medians and shoulders;
9. Construction of new bicycle paths;
10. Construction of new pedestrian pathways and sidewalks; and
11. Installation of new landscaping in conjunction with any of the projects listed in this subsection (i)(3)a.

b. Proceeds from each account shall be used exclusively for the capital expansion of the county's major road net system in the subdistrict from which the moneys have come, with the exception that a portion of the funds from each district may be allocated to projects outside of the subdistrict, on U.S. 1, Card Sound Road, and C-905 in Key Largo, and the proceeds are used in a manner consistent with the capital improvements plan of the comprehensive plan.

c. Any funds in each of the accounts on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained in the applicable account.

d. Each year, the fair share transportation fees collected may be returned to the feepayer if the land development activity generating traffic is canceled due to noncommencement of construction before the funds have been spent or encumbered. Refunds may be made in accordance with this section, provided the then present owner files petition for a refund within three months from the date of noncommencement.

e. The refund of fair share transportation fees shall be undertaken through submission of a refund application to be submitted within one year following the end of the sixth year from the date on which the fair share transportation fee was paid or within three months from the date of noncommencement. The refund application shall include the following information:

    1. A notarized statement that the feepayer paid the fair share transportation fee for the property and the amount paid;
    2. A copy of the receipt issued by the county for payment of the fee;
    3. A certified copy of the latest recorded deed for the property; and
    4. A copy of the most recent ad valorem tax bill.

f. Within 20 working days of receipt of the refund application, the county Planning Director shall determine if it is complete. If the county Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the county Planning Director shall take no further action on the refund application.

g. When the county Planning Director determines the refund application is complete, he shall review it within 20 working days, and shall approve the proposed refund if he determines the feepayer has paid a fair share transportation fee, which the county has not spent or encumbered within six years from the date the fees were paid.

h. When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following six years from the date the fees were paid, the money shall be returned with interest at the rate of six percent per annum.

i. Any feepayer may appeal the county Planning Director's decision on a refund application, by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (c) of this section.

(j) Exemptions.

The following new land development activities generating traffic are exempted from payment of the fair share transportation fee:

(1) Alterations or expansion of an existing dwelling unit, including the replacement of or relocation within the service district, a mobile home, where no additional units are created and the use is not changed;
(2) The construction of accessory buildings or structures that are not dwelling units and which do not constitute an increase in intensity of use;
(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use;
(4) The construction of any employee or affordable housing units, provided that:

a. Prior to the issuance of a building permit for such units, evidence shall be provided to the Planning Director that a notice of deferred payment of impact fee has been recorded on the chain of title; and
b. If the employee or affordable housing units because of occupancy or ownership no longer qualify as affordable or employee units under the provisions of this chapter, the impact fee shall be due and owing; and

(5) Publicly owned governmental buildings, except for those used for permanent or temporary housing.

Sec. 126-9. Fair Share Community Park Impact Fee.

(a) Intent and authority.

(1) The BOCC has determined and recognized that the growth rate the county will experience through the year 2005 will necessitate significant expansion of the community parks in the county in order to maintain an acceptable level of active recreational opportunities for county residents.
(2) In order to finance these new capital improvements for community parks, several combined methods of financing will be necessary, one of which will require all land development in the county to pay a fair share park fee which is consistent with the principles established in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976) and Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983).
(3) Implementing such a regulatory and financing program is the responsibility of the county pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.) and F.S. § 125.01(1)(f), and is in the best interest of the public's health, safety and welfare.
(4) It is the purpose of this section to establish a regulatory system to assist in providing for new community parks needed to serve new growth and development new growth. Pursuant to this section, land development activity will be required to pay a fair share

community park fee which shall not exceed a pro rata share of the reasonably anticipated costs of new community park facilities required by new growth.

(5) It is not the purpose of this section to collect any money from new residential development in excess of the actual amount necessary to offset the demand placed on new community parks by the development.

(b) Time and amount of payment.

No certificate of occupancy for a permanent or temporary residential unit shall be issued until any applicable fair share park fee is paid. If, in the time between the date of the building permit application and the date of the request for a certificate for occupancy, the applicable fair share park fee amount is altered, the fee due shall be the lowest of the two amounts.

(c) Fair share park fee to be imposed on new residential land development activity.

(1) Payment of fair share fee prior to issuance of certificate of occupancy.

Any person who shall initiate any new residential land development activity that places an increased demand on the county's community park facilities shall pay prior to the issuance of a certificate of occupancy, either an alternate fee amount based upon the preparation of an individual assessment pursuant to subsection (c)(2) of this section or, a fair share park fee established by resolution of the BOCC.

(2) Individual assessment of fiscal impact of land development activity on community park facilities.

The community park impact analysis:

a. Any person who shall initiate any land development activity that places a demand on community park facilities may choose to provide an individual assessment of the demand the proposed land development activity will place on the county's community parks in order to show the capital expansion costs necessitated by the proposed land development activity is less than the fair share fee established in this subsection (c).

b. The individual assessment shall be undertaken through the submission of a community park impact analysis that shall include the following information:

1. The projected use of community park facilities by the proposed land development activity. This projection shall be based upon either local empirical surveys, or state or national information.

2. An assessment of the capital expansion of the county's community park facilities necessitated by the proposed land development, if those facilities are to be maintained at standards consistent with the comprehensive plan. Standard acceptable practices and methodological procedures in park planning and impact analysis shall be used to determine the capital

expansion of the county's community park facilities necessitated by the proposed land development activity.

3. An assessment of the costs for providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in the county for acceptable park acreage, the construction costs for park equipment outlined in the comprehensive plan, and the planning, design and engineering costs for the necessary capital improvements.
4. An assessment of the projected tax revenues that will be derived from the proposed land development activity that can be reasonably determined to be available to pay for new capital improvements to the county's community park facilities.
5. The amount of any shortfall between the projected tax revenues and the capital expansion costs for the community park facilities necessitated by the new land development activity. Any shortfall shall be considered the proposed fair share park fee.

c. The community park impact analysis shall be prepared by qualified professionals in the field of community impact analysis and economics, and shall be submitted to the Planning Director.

d. Within 20 working days of receipt of a community park impact analysis, the Planning Director shall determine if it is complete. If the Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the Planning Director shall take no further action on the community park impact analysis.

e. When the Planning Director determines the community park impact analysis is complete, he shall review it within 20 working days, and shall approve the proposed fee if it is determined that the methodology used to determine the proposed fair share park fee fairly assesses the costs for capital improvements to the county's community park facilities that are necessitated by the proposed land development activity if the county's community park facilities are going to be maintained at the level of services established in the comprehensive plan. If the Planning Director determines the methodology is unreasonable, it shall be denied, and the developer shall pay the fair share parks fee as established in this subsection.

f. Any person may appeal the county Planning Director's decision on any community park impact analysis he submits by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in this section.

(d) Credits to the fair share park fee.

(1) Where the person initiating the land development activity has entered into an agreement with the county to dedicate land for a community park, the county Planning Director shall grant a credit against any fair share park fee imposed by this section upon any new land development activity placing a demand on the county's community park facilities in an amount equal to the dollar value of the land dedication. No credit shall exceed the fair share park fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Planning Director, which agreement shall include the following information:

a. The proposed land or plan of park improvement prepared and certified by a duly qualified and licensed state engineer; and

b. The assessed value of the proposed land dedication.

(3) The proposed credit agreement shall be prepared by qualified professionals in the fields of park planning and real property appraisal.

(4) Within 20 working days of receipt of the proposed credit agreement, the Planning Director shall determine if the proposal is complete. If it is determined that the proposed credit agreement is not complete, the Planning Director shall send a written statement to the applicant outlining the deficiencies. The Planning Director shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(5) Once the Planning Director determines the credit agreement is complete, he shall review it within 20 working days, and shall approve the proposed credit agreement if it is determined that the proposed land dedication is consistent with the capital improvements outlined in the comprehensive plan for the county's community park facilities, and the proposed value of the land dedication is professionally acceptable. If the Planning Director determines that either the proposed land dedication or the value of the land dedication is not consistent with the comprehensive plan, or that the proposed costs are not acceptable, he shall deny the credit agreement and the applicant shall pay the fair share park fee.

(6) If the proposed credit agreement is approved by the Planning Director, a credit agreement shall be prepared and signed by the applicant and the county. It shall specifically outline the land dedication that will be made by the applicant, and the dollar credit the applicant shall receive for the dedication.

(7) Any person may appeal the Planning Director’s decision on any credit agreement he submits, by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (c) of this section.

(e) Review of the section and fee schedule.

Prior to the adoption of the annual budget, the BOCC shall receive a report from the county Planning Director reviewing the fair share park fee schedule in subsection (d) of this section and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to population projections, park equipment costs, inflation and other relevant factors.

(f) Use of funds collected.

(1) The county shall establish an appropriate accounting mechanism for ensuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the county's community park facilities.

(2) Three accounts shall be established, one for each subdistrict as shown in appendix A to the ordinance from which this chapter is derived; and the fees collected pursuant to this section shall be paid into the accounts established for the subdistrict in which the new land development activity is proposed.

(3) Expenditure of fair share fees shall be in accordance with the following:

a. Proceeds from each account shall be used exclusively for the capital expansion of the county's community park facilities in the subdistrict from which the moneys have come, and in a manner consistent with the capital improvements plan of the comprehensive plan.

b. Any funds in each of the accounts on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained in the applicable account. These moneys shall be used for the capital expansion of the county's community park facilities in the subdistrict from which the account funds have come, and in a manner consistent with the capital improvements plan in the comprehensive plan.

c. Each year, at the time the annual county budget is reviewed, the Planning Director shall propose appropriations to be spent from the accounts. Any amounts not appropriated from the accounts, together with any interest earnings, shall be carried over in the specific account to the following fiscal period.

(4) Refund of any fair share park fee shall be in accordance with the following:

a. Any fair share park fees collected shall be returned to the feepayer if the fees have not been spent or encumbered within six years from the date the fees were paid. Fair share park fees collected shall be deemed to be spent or encumbered on the basis of the first fee collected shall be the first fee spent for community park improvements.

b. Any fair share park fees collected shall be returned to the feepayer if the land development activity is canceled due to noncommencement, and if the fees have not been spent or encumbered. Fair share park fees collected shall be deemed to

be spent or encumbered on the basis of the first fee collected shall be the first fee spent for community park facilities.

c. The refund of fair share park fees shall be undertaken through the submission of a refund application to be submitted within one year following the end of the sixth year from the date on which the fair share park fee was paid or within three months of noncommencement. The refund application shall include the following information:

   1. A notarized sworn statement that the feepayer paid the fair share park fee for the property and the amount paid; and
   2. A copy of the receipt issued by the county for payment of the fee.

d. Within 20 working days of receipt of the refund application, the Planning Director shall determine if it is complete. If the Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the Planning Director shall take no further action on the refund application.

e. When the Planning Director determines the refund application is complete, he shall review it within 20 working days, and shall approve the proposed refund if he determines the feepayer has paid a fair share community park fee, which the county has not spent or encumbered within six years from the date the fees were encumbered or within three months of the date of noncommencement.

f. Any feepayer may appeal the Planning Director's decision on a refund application by filing a petition with the BOCC within 30 days of a decision by the Planning Director. In reviewing the Planning Director's decision, the BOCC shall use the standards established in subsection (c) of this section.

(g) Exemptions.

The following new land development activities shall be exempted from payment of the fair share park fee:

(1) Alterations or expansion of an existing dwelling unit, including the replacement of or relocation within the service district, a mobile home, where no additional units are created and the use is not changed;
(2) The construction of accessory buildings or structures that are not dwelling units and which do not constitute an increase in intensity of use;
(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use;
(4) The construction of any publicly owned governmental buildings, except for those used for permanent or temporary housing; and
(5) The construction of any employee or affordable housing units, provided that:

a. Prior to the issuance of a building permit for such units, evidence shall be provided to the Planning Director that a notice of deferred payment of impact fee has been recorded on the chain of title; and
b. If the employee or affordable housing units because of occupancy or ownership no longer qualify as affordable or employee units under the provisions of this chapter, the impact fee shall be due and owing.

Sec. 126-10. Fair Share Library Impact Fee.

(a) Purpose and authority.

(1) The BOCC has determined and recognized that the growth rate the county and the City of Key West will experience through the year 2005 will necessitate a significant capital expansion of the county's library facilities in order to provide adequate quality of library opportunities for city and county residents.
(2) In order to finance these new capital improvements, several combined methods of financing will be necessary, one of which will require all residential land development in the county to pay a fair share library fee which is consistent with the principles established in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).
(3) Implementing such a regulatory and financing program is the responsibility of the county in order to carry out this chapter and the comprehensive plan pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.) and F.S. § 125.01(1)(f) and is in the best interest of the public's health, safety and welfare.
(4) It is the purpose of this section to establish a regulatory system to assist in providing funding for the capital expansion of these new library facilities caused by the new growth. Pursuant to this section, residential land development in the unincorporated area of the county and the City of Key West will be required to pay a fair share library impact fee which does not exceed a pro rata share of the reasonably anticipated costs for the capital expansion of new library facilities caused by new growth. The county may enter into an inter-local agreement with the City of Key West for the collection of impact fees within the city with a provision for the payment of any city legal and administrative costs that may be involved in the collection of the fee. The city may also exempt units covered by the city's accessory apartment ordinance from the payment of library impact fees. Otherwise all other provisions of this section shall be applicable in the City of Key West.
(5) It is not the purpose of this section to collect any money from any new residential development in excess of the actual amount necessary to offset the demand placed on new county library facilities for capital expansion.

(b) Time and amount of payment.

No certificate of occupancy shall be issued for any residential unit until the applicable fair share library fee is paid. If, in the time between the date of the building permit application

and the date of the request for a certificate of occupancy, the applicable fair share library fee amount is altered, the fee due shall be the lower of the two amounts.

(c) Fair share library fee to be imposed on new residential land development activity.

(1) Payment of fair share fee prior to issuance of certificate of occupancy.

Any person who shall initiate any new residential land development activity that places an increased demand on the county's library facilities shall pay, prior to the issuance of a certificate of occupancy, either a fee amount based upon the preparation of an individual assessment in subsection (c)(2) of this section or, a fair share library fee as established by resolution of the BOCC.

(2) Individual assessment of fiscal impact of land development activity on library facilities.

The library impact analysis:

a. Any person who shall initiate any land development activity that places a demand on the county's library facilities may choose to provide an individual assessment of the demand the proposed land development activity will place on the county's library facilities in order to show that the capital expansion costs necessitated by the proposed land development activity is less than the fair share fee established in subsection (c)(1) of this section.
b. The individual assessment shall be undertaken through the submission of a library facilities analysis that shall include the following information:

1. The projected use of library facilities by the proposed land development activity. This projection shall be based upon either local empirical surveys, or state or national information.
2. An assessment of the capital expansion of the county's library facilities necessitated by the proposed land development, if those facilities are to be maintained at standards consistent with the comprehensive plan. Standard practices and methodological procedures in impact analysis shall be used to determine the capital expansion of the county's library facilities necessitated by the proposed land development activity.
3. An assessment of the costs for providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in the county for acceptable library facilities, the construction costs for library space, outlined in the comprehensive plan, and the planning, design and engineering costs for the necessary capital improvements.
4. An assessment of the projected tax revenues that will be derived from the proposed land development activity that can be reasonably determined to

be available to pay for new capital improvements to the county's library facilities.

5. The amount of any shortfall between the projected tax revenues and the capital expansion costs for the library facilities necessitated by the new land development activity. Any shortfall shall be considered the proposed fair share library fee.

c. The library facilities impact analysis shall be prepared by qualified professionals in the fields of community impact analysis and economics, and shall be submitted to the county Planning Director.

d. Within 20 working days of receipt of a library facilities impact analysis, the Planning Director shall determine if it is complete. If the Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the Planning Director shall take no further action on the library facilities impact analysis.

e. When the Planning Director determines the library facilities impact analysis is complete, he shall review it within 20 working days, and shall approve the proposed fee if it is determined that the methodology used to determine the proposed fair share library fee is professionally acceptable and fairly assesses the costs for capital improvements to the county's library facilities that are necessitated by the proposed land development activity if the county's library facilities are going to be maintained at the level of service established in the comprehensive plan. If the Planning Director determines the methodology is unreasonable, it shall be denied, and the developer shall pay the fair share library fee as established in this subsection.

f. Any person may appeal the county Planning Director's decision on any library facilities analysis he submits by filing a petition with the BOCCBOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in this section.

(d) Credits to the fair share library fee.

(1) Where the person initiating the land development has entered into an agreement with the county to dedicate land, books, periodicals or films, or to construct a library facility, the Planning Director shall grant a credit against any fair share library fee imposed by this section upon any new residential land development activity placing a demand on the county's library facilities in an amount equal to the dollar value of the capital improvements. No credit shall exceed the fair share library fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Planning Director, which agreement shall include the following information:

a. The proposed donation of land, books, periodicals or films, or the proposed plan of specific library space improvements; and
b. The projected dollar value for the suggested donations or improvements that shall be based on local information of similar land, books, periodicals, films or space improvements.

(3) The proposed credit agreement shall be prepared by qualified professionals in the fields of planning, impact analysis and economics.
(4) Within 20 working days of receipt of the proposed credit agreement, the Planning Director shall determine if the proposal is complete. If it is determined that the proposed credit agreement is not complete, the Planning Director shall send a written statement to the applicant outlining the deficiencies. The county Planning Director shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.
(5) Once the Planning Director determines the credit agreement is complete, he shall review it within 20 working days, and shall approve the proposed credit agreement if it is determined that the proposed donation or space improvement is consistent with the capital improvements outlined in the comprehensive plan for the county's library facilities, and the proposed valuation of the donation or space improvement is professionally acceptable. If the Planning Director determines that either the proposed donation or space improvement is not consistent with the comprehensive plan, or that the proposed costs are not acceptable, he shall deny the credit agreement and the applicant shall pay the fair share library fee.
(6) If the proposed credit agreement is approved by the Planning Director, a credit agreement shall be prepared and signed by the applicant and the county. It shall specifically outline the donation or space improvement that will be made by the applicant and the dollar credit the applicant shall receive for the donation or space improvement.
(7) Any person may appeal the Planning Director's decision on any credit agreement he submits by filing a petition with the BOCC within 30 days of a decision by the Planning Director. In reviewing the Planning Director's decision, the BOCC shall use the standards established in subsection (c) of this section.

(e) Review of the fee schedule.

Prior to the adoption of the annual budget, the BOCC shall receive a report from the county Planning Director reviewing the fair share library fee schedule in subsection (c) of this section and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to the population projections, library costs, inflation and other relevant factors.

(f) Use of funds collected.

(1) The county shall establish an appropriate accounting mechanism for ensuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the county's library facilities.

(2) Three accounts shall be established, one for each subdistrict as shown in appendix A to this chapter; and the fees collected pursuant to this section shall be paid into the accounts established for the subdistrict in which the new land development activity is proposed.

(3) Expenditure of fair share fees in fund shall be in accordance with the following:

a. Proceeds from each account shall be used exclusively for the capital expansion of the county's library facilities in the subdistrict from which the moneys have come, and in a manner consistent with the capital improvements plan of the comprehensive plan.

b. Any funds in the funds on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained in the applicable account. These moneys shall be used for the capital expansion of the county's library facilities in a manner consistent with the capital improvements plan in the comprehensive plan.

c. Each year, at the time the annual county budget is reviewed, the Planning Director shall propose appropriations to be spent from the fund. The proceeds shall be spent for capital improvements plan consistent with the capital improvements plan of the comprehensive plan. Any amounts not appropriated from the fund, together with any interest earnings, shall be carried over in the specific account to the following fiscal period.

(4) Refund of fair share fees, if not encumbered for community library facilities, shall be in accordance with the following:

a. Any fair share library fees collected shall be returned to the feepayer if the fees have not been spent or encumbered within six years from the date the fees were paid. Fair share library fees collected shall be deemed to be spent (encumbered) on the basis of the first fee collected shall be the first fee spent for library improvements.

b. Any fair share library fees collected shall be returned to the feepayer if the land development activity is canceled due to noncommencement and if the fees have not been spent or encumbered. Fair share library fees collected shall be deemed to be spent encumbered on the basis of the first fee collected shall be the first fee spent for library facilities improvements.

c. The refund of fair share library fees shall be undertaken through the submission of a refund application to be submitted within one year following the end of the sixth year from the date on which the fair share library fee was paid or within three months of noncommencement. The refund application shall include the following information:

1. A notarized sworn statement that the feepayer paid the fair share community library fee for the property and the amount paid; and
2. A copy of the receipt issued by the county for payment of the fee.

d. Within 20 working days of receipt of the refund application, the Planning Director shall determine if it is complete. If the Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the Planning Director shall take no further action on the refund application.

e. When the Planning Director determines the refund application is complete, he shall review it within 20 working days, and shall approve the proposed refund if he determines the feepayer has paid a fair share library fee, which the county has not spent or encumbered within six years from the date the fees were encumbered or within three months of noncommencement.

f. Any feepayer may appeal the Planning Director's decision on a refund application, by filing a petition with the BOCC within 30 days of a decision by the Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (c) of this section.

(g) Exemptions.

The following new land development activities shall be exempted from payment of the fair share library fee:

(1) Alterations or expansion of an existing dwelling unit, including the replacement of or relocation within the service district, a mobile home, where no additional units are created and the use is not changed;

(2) The construction of accessory buildings or structures that are not dwelling units and which do not constitute an increase in intensity of use;

(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use;

(4) The construction of any publicly owned governmental buildings, except for those used for permanent or temporary housing; and

(5) The construction of any employee or affordable housing units, provided that:

a. Prior to the issuance of a building permit for such units, evidence shall be provided to the Planning Director that a notice of deferred payment of impact fee has been recorded on the chain of title; and

b. If the employee or affordable housing units because of occupancy or ownership no longer qualify as affordable or employee units under the provisions of this chapter, the impact fee shall be due and owing.

Sec. 126-11. Fair Share Solid Waste Impact Fee.

(a) Purpose and authority.

(1) The BOCC has determined and recognized through the adoption of the comprehensive plan that the growth rate the county will experience through the year

2005 will necessitate a significant expansion of the solid waste facilities in the county in order to maintain an acceptable level of service for county residents.

(2) In order to finance these new solid waste facilities, several combined methods of financing will be necessary, one of which will require all land development in the county to pay a fair share solid waste fee that is consistent with the case of Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

(3) Implementing such a regulatory and financing program is the responsibility of the county in order to carry out this chapter and the comprehensive plan pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.) and is in the best interest of the public's health, safety and welfare.

(4) It is the purpose of this section to establish a regulating system to assist in providing funding for the capital expansion of these new solid waste facilities necessitated by the county's new growth. Pursuant to this section, new land development activity will be required to pay a fee that does not exceed a pro rata share of the reasonably anticipated costs it requires for the capital expansion of new solid waste facilities.

(5) It is not the purpose of this section to collect any money from any new residential development in excess of the actual amount necessary to offset the demand placed on new solid waste facilities. It is specifically acknowledged that this section has approached the problem of determining the fair share fee in a conservative and reasonable manner.

(b) Fee schedule.

(1) Any person who shall initiate any new land activity generating solid waste shall pay prior to the issuance of a certificate of occupancy either a fee amount based upon the preparation of an individual assessment pursuant to subsection (c) of this section or, a fair share solid waste fee as established by resolution of the BOCC.

(2) The amount of the fair share solid waste fee shall be reviewed biannually thereafter by the BOCC. The purpose of this review is to analyze the effect of inflation on the actual costs of solid waste facilities and to ensure that the fee charged new residential land development activity will not exceed its pro rata share of its reasonably anticipated expansion costs for new solid waste facilities necessitated solely by its presence.

(c) Individual assessment of impact of development on solid waste.

(1) Any land development activity may determine its fair share solid waste fee by providing use and economic documentation that the actual impact of the land development on the solid waste facilities in the subdistrict in which the development will be located is less than the fair share solid waste fee.

(2) The documentation submitted shall be prepared by a qualified professional engineer and shall show the basis upon which the fee has been calculated, including, but not

limited to, the information about demand for solid waste and costs for solid waste facilities.

(3) Within 20 working days of receipt of an individual assessment, the county Planning Director shall determine if it is complete. If the county Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the county Planning Director shall take no further action on the individual assessment.

(4) When the county Planning Director determines the individual assessment is complete, he shall review it within 20 working days and shall approve the proposed fee if it is determined that the information and methodology used to determine the proposed fair share solid waste fee are professionally acceptable and fairly assess the costs for capital improvements to the county's solid waste facilities that are necessitated by the proposed land development activity. If the county Planning Director determines the information and methodology is unreasonable, the proposed fee shall be denied, and the developer shall pay the fair share solid waste fee as established in subsection (b) of this section.

(5) Any person may appeal the county Planning Director's decision on an individual assessment he submits by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (b) of this section.

(d) Time and amount of payment.

The fair share solid waste fee shall be paid prior to the issuance of a certificate of occupancy. If, in the time between the date of the building permit application and the date of the request for a certificate of occupancy, the applicable fair share solid waste fee amount is altered, the fee due shall be the lower of the two amounts. All funds collected shall be properly identified by subdistrict and promptly transferred to the county administrator's office for deposit in the appropriate fund to be held in separate accounts as determined in subsection (f) of this section and used solely for the purpose as established by this section.

(e) Use of funds collected.

(1) The funds collected pursuant to these provisions shall be used solely for the purpose of construction or expansion of solid waste facilities in the county, including, but not limited to:

a. Design and construction plan preparation;
b. Land acquisition;
c. Acquisition of new incinerators; and
d. Acquisition of trucks and housing building equipment.

(2) All funds shall be used exclusively within the subdistricts from which they were collected and shall not be used to maintain existing solid waste facilities.

(f) Funds.

(1) There are hereby established three separate funds, one for each subdistrict as shown in appendix A to the ordinance from which this chapter is derived.
(2) Funds withdrawn from these funds must be used solely in accordance with the provisions of this section and in compliance with the comprehensive plan. The disbursal of such funds shall require the approval of the BOCC.
(3) Any funds on deposit not immediately necessary for expenditure shall be invested in interest-bearing accounts. All income derived shall be deposited in the applicable account.

(g) Refunds.

(1) The fees collected pursuant to this section shall be returned to the then present owner of the land development if the fees have not been spent or encumbered within a reasonable time, but not later than by the end of the calendar quarter immediately following six years from the date fees were paid.
(2) The fees collected pursuant to these provisions shall be returned to the present owner if the residential land development activity is canceled due to noncommencement of construction before the funds have been committed or spent.
(3) Refunds shall be made in accordance with the following procedures:

a. The present owner must petition the BOCC for the refund within one year following the end of the sixth year from the date on which the fee was paid or within three months from the date of noncommencement. The petition shall include:

1. A notarized statement that the petitioner is the current owner of the property;
2. A copy of the dated receipt issued showing payment of the fee;
3. A certified copy of the latest recorded deed; and
4. A copy of the most recent ad valorem tax bill.

b. Within three months from the date of receipt of a petition for refund, the director of the municipal service district will advise the petitioner and the BOCC of the status of the fee requested for refund. For the purpose of this section, fees collected shall be deemed to be spent or encumbered on the basis of the first fee in shall be the first fee out. In other words, the first money placed in a trust fund account shall be the first money taken out of that account when withdrawals are made.
c. When the money requested is still in the trust fund account and has not been spent or encumbered by the end of the calendar quarter immediately following

six years from the date the fees were paid, the money shall be returned with interest at the rate of six percent per annum.

(h) Exemptions.

The following new land development activities shall be exempted from payment of the fair share solid waste fee:

(1) Alterations or expansion of an existing dwelling unit, including the replacement of or relocation within the service district, a mobile home, where no additional units are created and the use is not changed;
(2) The construction of accessory buildings or structures that are not dwelling units and which do not constitute an increase in intensity of use;
(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use;
(4) The construction of any publicly owned governmental buildings, except for those used for permanent or temporary housing; and
(5) The construction of any employee or affordable housing units, provided that:

a. Prior to issuance of a building permit for such units, evidence shall be provided to the Planning Director that a notice of deferred payment of the impact fee has been recorded on the chain of title; and
b. If the employee or affordable housing units because of occupancy or ownership no longer qualify as affordable or employee units under the provisions of this chapter, the impact fee shall be due and owing.

(i) Credits.

In lieu of paying the fair share solid waste fee, a developer may elect to dedicate land of suitable size, dimension, topography and general character to serve as a solid waste site or a substantial portion thereof that will meet the solid waste needs created by the development. The director of the municipal service district shall determine if the dedicated land is an appropriate substitute for the fair share solid waste fee and the amount of credit to be given and the timetable for completion.

Sec. 126-12. Fair Share Police Facilities Impact Fee.

(a) Purpose and authority.

(1) The BOCC has determined and recognized through the adoption of the comprehensive plan that the growth rate the county will experience through the year 2005 will necessitate a significant capital expansion of the county's police facilities.
(2) In order to finance the capital expansion of these new police facilities to accommodate new growth, several combined methods of financing will be necessary, one of which will require all land development in the county to pay a fair share police

facilities fee that is consistent with the case of Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

(3) Implementing such a regulatory and financing program is the responsibility of the county pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq. and is in the best interest of the public's health, safety and welfare.

(4) It is the purpose of this section to establish a regulatory system to assist in providing funding for the capital expansion of these new police facilities created by the need to accommodate the county's new growth. Pursuant to this section, new land development will be required to pay a fee that does not exceed a pro rata share of the reasonably anticipated costs for the capital expansion of new police facilities.

(5) It is not the purpose of this section to collect any money from any new development in excess of the actual amount necessary to offset the requirements for the capital expansion of new police facilities. It is specifically acknowledged that this section has approached the problem of determining the fair share police facilities fee in a conservative and reasonable manner.

(b) Fair share police facilities fee to be imposed on new residential land development activity.

(1) Fee.

Any person who shall initiate any new land development activity generating a need for police facilities shall pay, prior to the issuance of a certificate of occupancy, either a fee amount based upon an individual assessment pursuant to subsection (b)(2) of this section, or, a fair share police facilities fee as established by resolution of the BOCC.

(2) Police facilities impact analysis.

Any land development activity may determine its fair share police facilities fee by providing use and economic documentation that the actual economic impact of the land development on the sheriff's department facilities is less than the fair share police facilities fee set forth in subsection (b)(1) of this section. The documentation submitted shall be prepared by qualified professionals in the field and shall show the basis upon which the fair share fee has been calculated, including, but not limited to, information about demand for police space, patrol cars and jail facilities.

(3) Review.

The amount of the fair share police facilities fee shall be reviewed biannually by the BOCC. The purpose of this review is to analyze the effect of inflation on the actual costs of police facilities and to ensure the fee charged new residential land development activity will not exceed its pro rata share of its reasonably anticipated expansion costs for new police facilities necessitated solely by its presence.

(c) Time and amount of payment.

No certificate of occupancy shall be issued until any applicable fair share police fee is paid. If, in the time between the date of the building permit application and the date of the request for a certificate of occupancy, the applicable fair share police fee amount is altered, the fee amount due shall be the lower of the two amounts.

(d) Use of funds collected.

(1) The funds collected pursuant to these provisions shall be used solely for the purpose of the capital expansion of police facilities in the county, including, but not limited to:

a. Design and construction plan preparation;
b. Land acquisition;
c. Acquisition of new patrol cars; and
d. Acquisition of jail facilities.

(2) The funds shall not be used to maintain existing police facilities.

(e) Credits to the fair share police facilities fee.

(1) Where a person initiating land development activity has entered into an agreement with the county to dedicate land or construct a building for police facilities that are consistent with the comprehensive plan, the county Planning Director shall grant a credit against any fair share police facilities fee imposed by this section upon the new land development activity. A credit equal to the dollar value of the land dedicated or police facility in the agreement shall be provided. No credit shall exceed the fair share police facilities fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the county Planning Director, which agreement shall include the following information:

a. The proposed land or plan of police building improvement prepared and certified by a duly qualified and licensed state engineer; and
b. The projected costs for the proposed land or building improvements.

The proposed credit agreement shall be prepared by qualified professionals in the fields of engineering, impact analysis and economics.

(3) Within 20 working days of receipt of the proposed credit agreement, the county Planning Director shall determine if the proposal is complete. If it is determined that the proposed agreement is not complete, the county Planning Director shall send a

written statement to the applicant outlining the deficiencies. The county Planning Director shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(4) Once the county Planning Director determines the credit agreement is complete, he shall review it within 20 working days, and shall approve the proposed credit agreement if it is determined that the proposed land dedication or building improvement is consistent with the capital improvements outlined in the comprehensive plan and the proposed costs for the land or building improvement are professionally acceptable and fairly assess the cost for the capital improvement. If the county Planning Director determines that either the suggested land dedication or building improvement is not consistent with the proposed improvements outlined in the plan or that the proposed costs are not acceptable, he shall deny the proposed credit agreement.

(5) If the proposed credit agreement is approved by the county Planning Director, a credit agreement shall be prepared and signed by the applicant and the county. It shall specifically outline the land dedication or building improvement that will be constructed by the applicant, the time by which it shall be completed, and the dollar credit the applicant shall receive for construction of the land dedication or building improvement.

(6) Any person may appeal the county Planning Director's decision on any credit agreement he submits by filing a petition with the BOCC within 30 days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (b) of this section.

(f) Review of the section and fee schedule.

Prior to the adoption of the annual budget, the BOCC shall receive a report from the county Planning Director reviewing the fair share police facilities fee schedule in subsection (b) of this section and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to the population projections, costs, inflation and other relevant factors.

(g) Use of funds collected.

(1) The county shall establish an appropriate accounting mechanism for ensuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the county sheriff's department.

(2) Three accounts shall be established, one for each subdistrict as shown in appendix A to the ordinance from which this chapter is derived; and the fees collected pursuant to this section shall be paid into the accounts established for the subdistrict in which the new land development activity is proposed.

(3) Expenditure of fair share fees in accounts shall be in accordance with the following:

a. Proceeds from each account shall be used exclusively for the capital expansion of the county sheriff's department in the subdistrict from which the moneys have

come, and in a manner consistent with the capital improvements plan of the comprehensive plan.

b. Any funds in the fund on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained in the applicable account. These moneys shall be used for the capital expansion of the county Sheriff's Department in a manner consistent with the capital improvements plan in the comprehensive plan.

c. Each year, at the time the annual county budget is reviewed, the Planning Director shall propose appropriations to be spent from the funds. The proceeds shall be spent for capital improvements from which the fund moneys have come, consistent with the capital improvements plan of the comprehensive plan. Any amounts not appropriated from the funds, together with any interest earnings, shall be carried over in the specific account to the following fiscal period.

(4) Refund of fair share fees if not encumbered shall be in accordance with the following:

a. Any fair share police facilities fees collected shall be returned to the feepayer if the fees have not been spent or encumbered within six years from the date the fees were paid. Fair share police facilities fees collected shall be deemed to be spent or encumbered on the basis of the first fee collected shall be the first fee spent for police facilities.

b. Any fair share police facilities fees collected shall be returned to the feepayer if the land development activity is canceled due to noncommencement, and if the fees have not been spent or encumbered. Fair share police facilities fees collected shall be deemed to be spent or encumbered on the basis of the first fee collected shall be the first fee spent for roadway improvement.

c. The refund of fair share police facilities fees shall be undertaken through submission of a refund application to be submitted within one year following the end of the sixth year from the date on which the fair share police facilities fee was paid or within three months of the date of noncommencement. The refund application shall include the following information:

1. A notarized statement that the feepayer paid the fair share police facilities fee for the property and the amount paid; and
2. A copy of the receipt issued by the county for payment of the fee.

d. Within 20 working days of receipt of the refund application, the county Planning Director shall determine if it is complete. If the county Planning Director determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the county Planning Director shall take no further action on the refund application.

e. When the county Planning Director determines the refund application is complete, he shall review it within 20 working days, and shall approve the

proposed refund if he determines the feepayer has paid a fair share police facilities fee, which the county has not spent or encumbered within six years from the date the fees were encumbered or within three months of the date of noncommencement.

f. Any feepayer may appeal the county Planning Director's decision on a refund application by filing a petition with the BOCC within 30 working days of a decision by the county Planning Director. In reviewing the county Planning Director's decision, the BOCC shall use the standards established in subsection (d) of this section.

(h) Exemptions.

The following new land development activities shall be exempted from payment of the fair share police facilities fee:

(1) Alterations or expansion of an existing dwelling unit, including the replacement of or relocation within the service district, a mobile home, where no additional units are created and the use is not changed;
(2) The construction of accessory buildings or structures that are not dwelling units and which do not constitute an increase in intensity of use;
(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use;
(4) The construction of any publicly owned governmental buildings, except for those used for permanent or temporary housing; and
(5) The construction of any employee or affordable housing units, provided that:

a. Prior to the issuance of a building permit for such units, evidence shall be provided to the Planning Director that a notice of deferred payment of impact fee has been recorded on the chain of title; and
b. If the employee or affordable housing units because of occupancy or ownership no longer qualify as affordable or employee units under the provisions of this chapter, the impact fee shall be due and owing.

Sec. 126-13. Affordable and Employee Housing Fair Share Impact Fee Trust Fund.

(a) Purpose.

(1) The BOCC has determined and recognized through the adoption of volume II of the Monroe County Comprehensive Land Use Plan and in recognition of the recommendations contained in the affordable housing study prepared for the City of Key West and the county by the Plantec Corporation dated February, 1988, that the county will need significant amounts of affordable and employee housing through the year 2005 and that it is in the interest of the public welfare to supply regulatory incentives in order to aid in the increase of the stock of affordable and employee housing.

(2) All new commercial, multifamily residential, institutional and industrial development creates a direct or indirect requirement for affordable or employee housing.
(3) Additional capital costs of providing new affordable and employee housing are the connection fees (impact fees), system development fees, and impact fees of the FKAA, Keys Energy, and the Florida Keys Electric Co-op, and the cost of land infrastructure improvements for qualified affordable housing projects.
(4) It is the purpose of this section to establish a trust fund to receive the regulatory impact fees collected under this section and Section 139-1, and, through their expenditure, to provide for the payment of the above-enumerated agencies, impact fees, land acquisition cost and infrastructure fees which are necessary capital costs associated with the provisions of affordable and employee housing.
(5) It is further the purpose of this section to provide a fair and equitable fair share fee for affordable and employee housing impacts generated by commercial, recreational, multifamily residential, institutional and industrial development, which are not otherwise required to provide employee housing, in all Urban Residential Mobile Home, Urban Residential Mobile Home-Limited, Sparsely Settled, Native Area, Mainland Native Area, Offshore Island, Improved Subdivision, Recreational Vehicle, Military Facilities, Airport and Parks and Recreation Districts, except for accessory uses, home occupations and single-family, mobile home, and duplex dwellings.

(b) Exemptions.

The following new land development activities shall be exempted from the requirement to provide employee housing:

(1) Alterations or expansion of an existing multifamily dwelling unit where no additional units are created and the use is not changed;
(2) The construction of accessory buildings or structures that are not dwelling units and which do not constitute an increase in intensity of use;
(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use;
(4) The construction of any publicly owned governmental buildings, except for those used for permanent or temporary housing; and
(5) The construction of single-family, mobile home and duplex dwellings.

Sec. 126-14. Employee Housing Fair Share Impact Fee

(a) *Purpose*. All new nonresidential floor area, including commercial/business, institutional, and industrial development, creates a direct or indirect requirement for employee housing. The availability and stability of employee housing stock is essential for the economic health of the county. Therefore, all applicants for new or transferred nonresidential floor area shall be assessed a fee to be used by the county to address employee housing issues.

(b) *Type of development affected.* The following types of development are affected by the impact fee:

(1) All new nonresidential floor area under Section 138-49(a); and
(2) The following development activities exempted under Section 138-50 are subject to the employee housing fair share impact fee:

a. Nonresidential development in areas exempted from residential ROGO, per Section 138-50(b);
b. Development activity for certain not-for-profit organizations, per Section 138-50(d);
c. Vested rights, per Section 138-50(e);
d. De minimis expansion of nonresidential floor area, per Section 138-50(f);
e. Industrial uses, per Section 138-50(g); and
f. Transfer and redevelopment off site of lawfully established nonresidential floor area which has not operated commercially for three years or more, per Section 138-50(j).

(c) *Establishment of fee schedule.* An applicant for any new nonresidential floor area identified in subsection (b) of this section shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

Structures for nonresidential uses of one to 1,999 square feet	$1.00 per square foot
Structures for nonresidential uses of 2,000 to 2,999 square feet*	$2.00 per square foot
Structures for nonresidential uses of 3,000 square feet or greater*	$3.00 per square foot
*The fee is calculated on the total new or transferred nonresidential floor area subject to subsection (a)(2)f. of this section.	

(d) *Proceeds*. Proceeds from the impact fees collected shall be deposited in the employee housing fair share impact fee account and used exclusively to offset the cost of required permitting and connection fees related to the development of new employee housing, in accordance with a schedule and procedures recommended by the Planning Commission and approved by the board of county

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Chapter 130 LAND USE DISTRICTS

ARTICLE I. IN GENERAL

Sec. 130-1. Purpose.

In order to ensure that all development is consistent with the objectives and policies of this Land Development Code, it is necessary and proper to establish a series of land use districts to ensure that each permitted use is consistent with the environmental sensitivity of natural resources, is served by adequate public facilities, and is compatible with surrounding land uses. Each district establishes use and bulk regulations that control the use of land in each district consistent with this Land Development Code. All development within each land use district shall be consistent with the purposes stated for that land use district in this chapter.

Sec. 130-2. Land Use Districts Established.

In order to carry out and implement the goals and objectives of the Comprehensive Plan, the following land use (zoning) districts are hereby established:

(1) Airport District (AD).
(2) Commercial 1 District (C1).
(3) Commercial 2 District (C2).
(4) Conservation District (CD).
(5) Commercial Fishing Area District (CFA).
(6) Commercial Fishing Special Districts (CFSD).
(7) Commercial Fishing Village District (CFV).
(8) Destination Resort District (DR).
(9) Industrial District (I).
(10) Improved Subdivision District (IS).
(11) Improved Subdivision Vacation Rental District (IS-V).
(12) Military Facilities District (MF).
(13) Maritime Industries District (MI).
(14) Mainland Native Area District (MN).
(15) Mixed Use District (MU).
(16) Native Area District (NA).
(17) Offshore Island District (OS).
(18) Preservation District (P).
(19) Park and Refuge District (PR).
(20) Recreational Vehicle District (RV).
(21) Suburban Commercial District (SC).
(22) Suburban Residential District (SR).
(23) Suburban Residential District (limited) (SR-L).
(24) Sparsely Settled Residential District (SS).
(25) Urban Commercial District (UC).
(26) Urban Residential District (UR).

(27) Urban Residential—Mobile Home District (URM).
(28) Urban Residential Mobile Home—Limited District (URM-L).

Sec. 130-3. Land Use District Map.

(a) *Authority.* The BOCC, upon the recommendation of the Planning Commission, shall adopt an official land use district (zoning) map that shall set out and delineate the land use districts established in section 130-2 to all land in the unincorporated areas of the county.

(b) *Effect.* The official land use district (zoning) map is hereby designated, established and incorporated as a part of this chapter; and the originals thereof, which are on file at the offices of the Planning and Environmental Resources Department , shall be as much a part of this chapter as if the information contained therein were set out in full in this chapter.

(c) *Review and amendment.* The official land use district (zoning) map shall be reviewed and amended to be consistent with the comprehensive plan. The official land use district (zoning) map may subsequently be amended from time to time as provided in chapter 102, article V.

Secs. 130-4—130-26. Reserved.

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ARTICLE II. DISTRICT PURPOSES

Sec. 130-27. Purpose of the Airport District (AD).

The purpose of the AD district is to facilitate the operations of airports and their compatible uses and to prohibit the development of residential uses (excluding temporary non-emergency housing), educational uses (including but not limited to pre-K through high schools) and/or other uses that are characterized by the regular presence of large numbers of people, within the hazard areas of civil and military airports. The AD district provides classifications of property for existing or future airports and regulates both uses within the boundaries of public and private airports, and uses around, adjacent, and in the approach zones of public and private airports in order to:

(1) Establish the control of obstructions and construction of structures affecting navigable airspace in accordance with criteria delineated in volume XI, part 77 in federal aviation regulations, Florida Department of Transportation regulations, and this LDC;
(2) Protect airports against encroachment, to implement appropriate noise abatement strategies, and to regulate development and reduce public exposure of community activities that are not compatible with airport operations; and
(3) Control uses within the public and private airport property boundaries.

Sec. 130-28. Purpose of the Commercial 1 District (C1).

The purpose of the C1 district is to establish areas for commercial retail, public, institutional and office uses designed and intended primarily to serve the needs of immediately surrounding residential areas. This district should be established at locations convenient and accessible to residential uses to reduce trips on U.S. 1.

Sec. 130-29. Purpose of the Commercial 2 District (C2).

The purpose of the C2 district is to designate appropriate areas for higher-intensity commercial uses intended to serve the needs of a subarea with commercial retail sales and service, public, institutional and office uses. This district should be established at discrete nodes along U.S. 1 and designed to serve the needs of both residents and visitors.

Sec. 130-30. Purpose of the Conservation District (CD).

The purpose of the CD district is to identify areas acquired for conservation purposes and/or subject to deed restrictions limiting the use of the property to conservation purposes.

Sec. 130-31. Purpose of the Commercial Fishing Area District (CFA).

The purpose of the CFA district is to establish areas suitable for uses that are essential to the commercial fishing industry, including sales and service of fishing equipment and supplies,

seafood processing, fishing equipment manufacture and treatment, boat storage and residential uses.

Sec. 130-32. Purpose of the Commercial Fishing Special District (CFSD).

The purpose of the CFSD district is to establish areas where various aspects of commercial fishing have been traditionally carried out while prohibiting the establishment of additional commercial fishing uses that are inconsistent with the natural environment, immediate vicinity or community character of the area. Each individual sub-district has unique characteristics relating to the fishing and maritime industry of that particular location.

Sec. 130-33. Purpose of the Commercial Fishing Village District (CFV).

The purpose of the CFV district is to establish areas where limited commercial fishing activities, including the mooring of boats, the non-mechanized off-loading of catches, the storage of a limited number of traps, and residential uses, can be integrated.

Sec. 130-34. Purpose of the Destination Resort District (DR).

The purpose of the DR district is to establish areas suitable for the development of planned tourist centers providing on-site residential, recreational, commercial and entertainment facilities of a magnitude sufficient to attract visitors and tourists for tenancies of three or more days. Destination resorts are contemplated to contain:

(1) Single-family homes as of right; or
(2) One or more resort hotels as the principal use, to use the water-related natural resources of the Keys, and to be located on sites of at least ten gross acres where the location and character of the site and the development itself and amenities are such that off-site impacts will be reduced.

Sec. 130-35. Purpose of the Industrial District (I).

The purpose of the I district is to establish areas that are suitable for the development of industrial, manufacturing, warehousing, and distribution uses.

Sec. 130-36. Purpose of the Improved Subdivision District (IS).

The purpose of the IS district is to accommodate the legally vested residential development rights of the owners of lots in subdivisions that were lawfully established and improved prior to the adoption of this LDC. For the purpose of this section, improved lots are those that are served by a dedicated and accepted existing road of porous or nonporous material, that have an approved potable water supply, and that have sufficient uplands to accommodate the proposed use in accordance with the required setbacks. This district is not intended to be used for new land use districts of this classification within the county.

Sec. 130-37. Purpose of the Military Facilities District (MF).

The purpose of the MF district is to establish areas for military facilities and installations and to ensure to the maximum extent allowed by federal law that all development activity within such areas is consistent with the Monroe County Comprehensive Plan.

Sec. 130-38. Purpose of the Maritime Industries District (MI).

The purpose of the MI district is to establish and conserve areas suitable for maritime uses such as ship building, ship repair, other water dependent manufacturing and service uses and other uses consistent with the Monroe County Comprehensive Plan.

Sec. 130-39. **Purpose of the Mainland Native Area district (MN).**

The purpose of the MN district is to protect the undeveloped and environmentally sensitive character of lands within the county that are located on the mainland of the Florida peninsula.

Sec. 130-40. Purpose of the Mixed Use District (MU).

The purpose of the MU district is to establish or conserve areas of mixed uses, including commercial fishing, resorts, residential, institutional, and commercial uses, and preserve these as areas representative of the character, economy and cultural history of the Florida Keys.

Sec. 130-41. Purpose of the Native Area District (NA).

The purpose of the NA district is to establish areas that are undisturbed, with the exception of existing solid waste facilities, and because of their sensitive environmental character should be preserved in their natural state.

Sec. 130-42. Purpose of the Offshore Island District (OS).

The purpose of the OS district is to establish areas that are not connected to U.S. 1 as protected areas, while permitting low-intensity residential uses and campground spaces in upland areas.

Sec. 130-43. Purpose of the Preservation District (P)

The purpose of the P district is to provide for publicly owned lands held exclusively for the preservation of natural resources.

Sec. 130-44. Purpose of the Park and Refuge District (PR).

The purpose of the PR district is to establish and protect areas as parks, recreational areas and wildlife refuges.

Sec. 130-45. Purpose of the Recreational Vehicle District (RV).

The purpose of the RV districts is to establish areas suitable for the development of destination resorts for recreational vehicles and other transient units such as seasonal residential units.

Sec. 130-46. Purpose of the Suburban Commercial District (SC).

The purpose of the SC district is to establish areas for commercial uses designed and intended primarily to serve the needs of the immediate planning area in which they are located. This district should be established at locations convenient and accessible to residential areas to reduce trips on U.S. 1.

Sec. 130-47. Purpose of the Suburban Residential District (SR).

The purpose of the SR district is to establish areas of low- to medium-density residential uses characterized principally by single-family detached dwellings. This district is predominated by development; however, natural and developed open space creates an environment defined by plants, spaces and over-water views.

Sec. 130-48. Purpose of the Suburban Residential District (Limited) (SR-L).

The purpose of the SR-L district is to establish areas of exclusive low- to medium-density residential uses.

Sec. 130-49. Purpose of the Sparsely Settled Residential District (SS).

The purpose of the SS district is to establish areas of low-density residential development where the predominant character is native or open space lands.

Sec. 130-50. Purpose of the Urban Commercial District (UC).

The purpose of the UC district is to designate appropriate areas for high-intensity commercial uses intended to provide retail sales and service, professional services and resort activities needs at a regional or multiple planning area scale. This district should be established at discrete nodes along U.S. 1 and should be designed so as to serve the needs of both residents and visitors.

Sec. 130-51. Purpose of the Urban Residential District (UR).

The purpose of the UR district is to provide areas appropriate for high-density residential uses and to create areas to provide for vacation rental use of detached dwellings, duplexes, and multifamily dwellings. This district should be established at or near employment centers.

Sec. 130-52. Purpose of the Urban Residential – Mobile Home district (URM).

The purpose of the URM district is to recognize the existence of established mobile home parks and subdivisions, but not to create new such areas, and to provide for such areas to serve as a reservoir of affordable and moderate-cost housing in the county.

Sec. 130-53. Purpose of the Urban Residential Mobile Home – Limited District (URM-L).

The purpose of the URM-L district is to recognize the existence of parks and subdivisions which consist exclusively, or almost exclusively, of mobile homes, but not to create new such areas, in order to permit property owners in such areas to replace or establish mobile homes below base flood elevation as authorized by certified federal regulations.

Secs. 130- 54—130-73. Reserved.

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ARTICLE III. PERMITTED AND CONDITIONAL USES

Sec. 130-74. General.

(a) No structure or land in the county shall hereafter be developed, used or occupied unless expressly authorized in a land use district in this article.

(b) Notwithstanding any provision of this article, all development listed as a conditional use within a master planned community of 100 or more acres in area shall be reviewed and processed as a use permitted as of right. In such cases, a pre-application conference shall be required prior to the submittal of a permit application for development approval.

(c) Accessory uses as permitted within each land use district shall be consistent with the definition of accessory uses as set forth in section 101-1.

Sec. 130-75. Airport District (AD).

(a) The following uses are permitted as of right in the Airport district:

(1) At public airports: Public airport uses;
(2) At private airports: Noncommercial aircraft landing, takeoff, storage, repair, maintenance and fueling, provided that;

a. Effective landing length shall be no less than 1,800 feet;
b. Primary surface width shall be no less than 100 feet; and
c. Usable width shall be no less than 50 feet.

(3) Accessory uses;
(4) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(5) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c); and
(6) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

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

(1) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district, provided that:

a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
b. The wastewater treatment facility, wastewater treatment collection systems, and accessory uses shall be screened by structures designed to:

1 Be architecturally consistent with the character of the surrounding community;
2 Minimize the impact of any outdoor storage, temporary or permanent; and
3 A solid fence may be required upon determination by the Planning Director;

c. Where a district boundary buffer is not required as set forth in chapter 114, article V, a planting bed, eight feet in width, shall be established to buffer the facility, with the following:

1 One native canopy tree for every 25 feet of property line;
2 One understory tree for every ten feet of property line;
3 The required trees shall be evenly distributed throughout the planting bed; and;
4 The planting bed shall be installed as set forth in chapter 114, article IV.

(2) At public airports: Public airport uses of less than 5,000 square feet of enclosed area;
(3) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d); and
(4) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e).

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

(1) At public airports: Public airport uses of 5,000 square feet or more of enclosed space; and
(2) At private airports: Commercial aircraft operations, including fixed base operators (FBO) activities.

(d) *Airport Height Overlay Zones and Restrictions.* There are hereby created and established overlay zones around and adjacent to public, private and military airports in the county. Within the AD district and overlay zones, certain height limitations are specified to prevent airspace obstruction, and the use limitations apply. Uses within the overlay zones must comply with the height standards and the limitations set forth below. An area located in more than one zone described herein is considered to be only in the zone with the more restrictive limitations.

(1) Public Airport Height Restrictions.

a. *Primary zone.* The area longitudinally centered on each runway with the same length as the runway and is 2,000 feet wide. No structure that is not a part of the landing and takeoff area is permitted in the primary zone that is of greater height than the nearest point on to the runway.

b. *Clear zone.* The area extending 1,000 feet off each end of a primary surface and is the same width as the primary surface. No structure not a part of the landing and takeoff area is permitted that is a greater height than the end of the runway.

c. *Inner horizontal zone.* The area extending outward from the periphery of the primary zone with an outer perimeter formed by swinging arcs of 7,500 feet radius about the centerline at the end of each primary zone and connecting adjacent arcs by lines tangent to these arcs. No structure will be permitted in the inner horizontal zone of greater height than 156 feet MSL.

d. *Conical zone.* The area extending outward from the periphery of the inner horizontal zone for a distance of 7,000 feet. Height limits in the conical zone commence at 156 feet MSL at the inner boundary where it adjoins the inner horizontal zone and increases in permitted height at a rate of one foot vertically for every 20 feet of horizontal distance measured outward from the inner boundary to a height of 506 feet MSL at the outer boundary.

e. *Outer horizontal zone.* The area extending outward from the outer periphery of the conical zone for a distance of 30,000 feet. The height limit within the outer horizontal zone is 506 feet MSL.

f. *Approach zone.* The area longitudinally centered on each runway extended centerline, with an inner boundary 200 feet out from the end of the runway and the same width as the primary zone, then extending outward for a distance of 50,000 feet, expanding uniformly in width to 16,000 at the outer boundary. Height limits within the approach zones commence at the height of the runway end and increase at the rate of one foot vertically for every 50 feet horizontally for a distance of 25,000 feet, at which point it remains level at 506 feet MSL to the outer boundary.

g. *Transitional zone.* The area within an inner boundary formed by the side of the primary zones, the first 200 feet of the clear zones and the approach zones, then extending outward at right angles to the runway centerline and extended centerline until the height matches the adjoining inner horizontal zone, conical zone, and outer horizontal zone height limit. The height limit at the inner boundary is the same as the height of the adjoining zone and increases at the rate of one foot vertically for every seven feet horizontally to the outer boundary of the transitional zone, where it again matches the height of the adjoining zone.

(2) Private Airport Height Restrictions.

a. The landing approach zone for private airports is a trapezoidal area increasing gradually in width from 50 feet to either side of the runway centerline, at the ends of each usable runway, to a width of 350 feet to either side of the runway centerline at a distance of 3,000 feet outward from the ends of each runway.

b. Approach zones shall be clear of obstruction above a glide path of 20:1 from the ends of each usable runway. When the approach zone to any runway crosses a road, the glide path must pass at least 15 feet above the edge of the nearest traffic lane.

c. No establishments or uses shall be allowed that emit smoke, gas or dust in quantities or densities sufficient to jeopardize the safe use of private airports.

d. No development approval or building permit shall be granted for the construction of any structure to be located within a private airport district or overlay zone that, when built, would constitute an airspace obstruction height that would cause a minimum obstruction altitude, a minimum descent altitude, or a decision height to be changed or a threshold to be displaced, or to interfere with the required approach glide slope.

e. No property owner within the private airport district or overlay shall be permitted to grow or maintain trees to heights in excess of those provided herein for structures.

(e) All development or expansion of existing public airports shall be done in accordance with the updated Master Plan of the airport and adopted ordinances.

Sec. 130-76. Conservation District (CD).

(a) The following uses are permitted as of right in the Conservation district, pursuant to the standards and procedures set forth in chapter 110, article II:

(1) Passive recreational uses;
(2) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c); and
(3) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

Sec. 130-77. Commercial Fishing Area District (CFA).

(a) The following uses are permitted as of right in the Commercial Fishing Area district:

(1) Commercial fishing;
(2) Accessory uses;
(3) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(4) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(5) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(6) Home occupations—Special use permit required; commercial fishing does not require a special use permit.

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

(1) Attached dwellings, provided that the total floor area of residential uses in a CFA district does not exceed 25 percent of the land area in that CFA district.
(2) Commercial retail uses of low and medium intensity, provided that the goods and services are related to or supportive of the commercial fishing industry.
(3) Light industrial uses, including marine repair services, provided that such uses are intended only to serve the needs of the commercial fishing industry.
(4) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(5) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(6) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Marinas and boat chartering, provided that:

a. The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
c. Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pumpout facility is available on-site and where the waste is treated in a permitted sewage treatment facility;
d. All outside storage areas are screened from adjacent residential uses by a solid fence, wall or hedge at least six feet in height;
e. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;
f. There is no displacement of existing commercial fishing dockage or area;
g. No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
h. No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as trap storage and manufacture of traps;

(2) Restaurants, dive shops, and other commercial retail uses under 1,600 square feet per shop, provided that:

a. There is no displacement of existing commercial fishing dockage or area;
b. No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
c. No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps;

(3) Monuments, provided that:

a. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet; and

b. The use is separated from adjoining residential uses by a class H bufferyard; and

(4) New antenna-supporting structures, pursuant to section 146-5(a).

(d) In order to provide for the special needs of the commercial fishing industry, while ensuring general compliance with plan requirements and maintaining good environmental quality and community character, the Commercial Fishing Area district is given the following special considerations:

(1) The Commercial Fishing Area district, under minor conditional use, may vary the requirements of the district;
(2) Temporary uses specifically involving trap construction, maintenance and repair are hereby exempted from maximum FAR and minimum open space requirements;
(3) Sanitary toilet facilities may be provided by using approved portable units;
(4) Non-shoreline and shoreline setbacks may be varied by the Planning Director upon a written recommendation by the County Biologist that stormwater runoff can be appropriately controlled due to the provisions of new gutters, berms or similar devices;
(5) The vegetated bufferyard requirements may be varied to include fences or natural vegetation except when abutting residential districts;
(6) Lighting requirements may be reduced or waived where the Planning Director and County Biologist agree that light intrusion, either to adjoining properties or waterfront areas, will have no adverse effect on community character or habitat; and
(7) Except for commercial retail and wholesale operations, parking requirements may be met by the provision of one parking or loading space for each individual lot of 6,000 square feet or less. Larger lots or parcels shall proportionately meet this same requirement.

Sec. 130-78. Reserved.

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Sec. 130-79. Commercial Fishing Special District (CFSD).

The following uses are permitted in the Commercial Fishing Special Districts:

(a) CFSD 1 (located on Big Pine):

(1) The following uses are permitted as of right in Commercial Fishing Special District 1, subject to a limitation on traffic access so as not to interfere with U.S. 1 at the bridge ramp:

a. Commercial fishing;
b. Detached dwellings;
c. Accessory uses;
d. Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
e. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
f. Home occupations—Special use permit required; commercial fishing does not require a special use permit; and
g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 1, subject to a limitation on traffic access so as not to interfere with U.S. 1 at the bridge ramp, and subject to the standards and procedures set forth in Chapter 110, Article III:

a. Attached dwellings, provided that the total floor area of residential uses in Commercial Fishing Special District 1 does not exceed 25 percent of the land area in Commercial Fishing Special District 1;
b. Commercial retail and restaurant uses of low and medium intensity, provided that the goods and services are related to or supportive of the commercial fishing industry;
c. Light industrial uses, including marine repair services, provided that such uses are intended only to serve the needs of the commercial fishing industry; and
d. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 1, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;

2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and

3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;

ii. The required trees shall be evenly distributed throughout the planting bed;

iii. The planting bed shall be installed as set forth in chapter 114, article IV; and

iv. A solid fence may be required upon determination by the planning director.

(b) CFSD 2 (located on No Name Key):

(1) The following uses are permitted as of right in Commercial Fishing Special District 2:

a. Commercial fishing;
b. Detached dwellings;
c. Accessory uses;
d. Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
e. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
f. Home occupations—Special use permit required; commercial fishing does not require a special use permit; and
g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 2, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Attached dwellings, provided that the structures are separated from existing detached dwellings by 100 feet or a class D bufferyard; and
b. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 2, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
iv. A solid fence may be required upon determination by the planning director.

(c) CFSD 4 (located on Long Key):

(1) The following uses are permitted as of right in Commercial Fishing Special District 4:

a. Commercial fishing;
b. Accessory uses;
c. Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
d. Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
e. Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
f. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);and
g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 4, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
b. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 4, subject to the standards and procedures set forth in Chapter 110, Article III:

a. New antenna-supporting structures, pursuant to section 146-5(a); and
b. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
iv. A solid fence may be required upon determination by the Planning Director.

(d) CFSD 5 (located on Key Largo):

(1) The following uses are permitted as of right in Commercial Fishing Special District 5:

a. Commercial fishing;
b. Commercial retail, limited to fish houses;
c. Detached dwellings;

d. Accessory uses;
e. Institutional uses;
f. Institutional residential uses, involving less than ten dwelling units or rooms;
g. Public buildings and uses;
h. Attached dwellings of less than six units, designated as employee housing as provided for in section 139-1;
i. Commercial apartments involving less than six dwelling units;
j. Light industrial uses, limited to marine repair services, including engine and fishing gear repair, provided that such uses are intended only to serve the needs of the commercial fishing industry;
k. Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
l. Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
m. Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
n. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
o. Home occupations—special use permit required; commercial fishing does not require a special use permit; and
p. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 5, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Institutional residential uses involving ten to 20 dwelling units or rooms;
b. Commercial apartments involving six to 18 dwelling units, provided that:

1 The hours of operation of the commercial uses are compatible with residential uses;
2 Tourist housing uses, including vacation rental uses, of commercial apartments are prohibited;

c. Parks;
d. Attached and detached dwellings involving six to 18 units, designated as employee housing as provided for in section 139-1;
e. Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
f. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 5 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Marinas, provided that:

1 The parcel proposed for development has continuous access to water of depths of at least four feet below mean sea level at mean low tide.
2 The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products.
3 Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pump-out facility is available on-site, and where the waste is treated in a permitted sewage treatment facility.
4 All outside storage areas are screened from adjacent residential uses by a solid fence, wall or hedge at least six feet in height.
5 Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet
6 There is no displacement of existing commercial fishing dockage or area;
7 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
8 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps.
9 If marina slips are leased on any basis longer than month-to-month, the marina shall lease at least 20 percent of its docking slips on a month-to-month basis, and commercial fishing boats shall be given priority for those slips.
10 Each marina owner or operator, shall maintain a waiting list for commercial fishing boats and give them first priority at the end of each one-month leasing period.
11 The following message shall be posted on one two-foot by four-foot sign, on the seaward end of the most visible pier or mooring, and on the landward end of each pier, at each marina:

FISHING BOATS	
If you have problems finding dockage or if you have questions, contact:	
Name	Phone No.
_____	_____

b. Restaurants, dive shops, and other commercial uses of less than 1,600 square feet per shop, provided that:

1 There is no displacement of existing commercial fishing dockage or area;
2 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and

3 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps. Such uses shall be considered subordinate to the existing principal commercial fishing use, and shall only be allowed so long as the principal fishing use remains and is integrated into the design of the development and would reinforce the commercial fishing industry;

c. New antenna-supporting structures, pursuant to section 146-5(a); and

d. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;

2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and

3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;

ii. The required trees shall be evenly distributed throughout the planting bed;

iii. The planting bed shall be installed as set forth in chapter 114, article IV; and

iv. A solid fence may be required upon determination by the Planning Director.

(e) CFSD 6 (located on Boca Chica):

(1) The following uses are permitted as of right in Commercial Fishing Special District 6:

a. Commercial fishing;

b. Accessory uses;

c. Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);

d. Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);

e. Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);

f. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and

g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 6 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Commercial retail, low- and medium-intensity uses, provided that the goods and services are related to or supportive of the commercial fishing industry;
b. Light industrial uses, including marine repair services, provided that such uses are intended only to serve the needs of the commercial fishing industry;
c. Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
d. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 6 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Marinas and boat chartering, provided that:

1 The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
2 The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing products;
3 Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pumpout facility is available on-site, and where the waste is treated in a permitted sewage treatment facility;
4 All outside storage areas are screened from adjacent resident uses by a solid fence, wall or hedge at least six feet in height;
5 Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;
6 There is no displacement of existing commercial fishing dockage or area;
7 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
8 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps;

b. Restaurants, dive shops, and other commercial uses of less than 1,600 square feet per shop, provided that:

1 There is no displacement of existing commercial fishing dockage or area;

2 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and

3 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps. Such uses shall be considered subordinate to the existing principal commercial fishing use, and shall only be allowed so long as the principal fishing use remains and is integrated into the design of the development and would reinforce the commercial fishing industry;

c. New antenna-supporting structures, pursuant to section 146-5(a); and

d. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;

2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and

3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;

ii. The required trees shall be evenly distributed throughout the planting bed;

iii. The planting bed shall be installed as set forth in Chapter 114, Article IV; and

iv. A solid fence may be required upon determination by the Planning Director.

(f) CFSD 7 (located on Boca Chica):

(1) The following uses are permitted as of right in Commercial Fishing Special District 7:

a. Light and heavy industrial uses, limited to boat building, repair and storage and other maritime-oriented industrial uses;

b. Maritime-oriented commercial retail, office, or restaurant uses, or any combination thereof, of less than 5,000 square feet of floor area;

c. Commercial fishing;

d. Institutional uses;

e. Public buildings and uses;

f. Accessory uses;

g. Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
h. Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
i. Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
j. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
k. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 7 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Maritime-oriented commercial retail, office, restaurant uses, or any combination thereof, of greater than 5,000 but less than 20,000 square feet of floor area;
b. Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e);
c. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
d. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet.

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 7 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Heliports, provided that:

1 The landing and departure approaches do not pass over established residential uses or known bird rookeries; and
2 The use is fenced or otherwise secured from entry by unauthorized persons;

b. New antenna-supporting structures, pursuant to section 146-5(a);
c. Marinas and boat chartering, provided that:

1 The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
2 The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing products;
3 Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pumpout facility is available on-site, and where the waste is treated in a permitted sewage treatment facility;

4 All outside storage areas are screened from adjacent resident uses by a solid fence, wall or hedge at least six feet in height;
5 Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;
6 There is no displacement of existing commercial fishing dockage or area;
7 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
8 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps.

d. Restaurants, dive shops, and other commercial uses of less than 1,600 square feet per shop, provided that:

1 There is no displacement of existing commercial fishing dockage or area;
2 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
3 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps. Such uses shall be considered subordinate to the existing principal commercial fishing use, and shall only be allowed so long as the principal fishing use remains and is integrated into the design of the development and would reinforce the commercial fishing industry.

e. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and

iv. A solid fence may be required upon determination by the Planning Director.

(g) CFSD 8 (located on Big Pine):

(1) The following uses are permitted as of right in Commercial Fishing Special District 8:

a. Commercial fishing, provided a class C bufferyard is provided along the boundary of CFSD 8 with any residential land use district;
b. Detached dwellings;
c. Accessory uses;
d. Home occupations – special use permit required; commercial fishing does not require a special use permit;
e. Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
f. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 8 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Attached dwellings, provided that the total floor area of residential uses in CFSD 8 does not exceed 25 percent of the land area in CFSD 8;
b. Commercial retail and restaurant uses, of low- and medium-intensity, provided that the goods and services are related to or supportive of the commercial fishing industry, and provided a class C bufferyard is provided along the boundary of CFSD 8 with any residential land use district;
c. Light industrial uses, including marine repair services, provided that such uses are intended only to serve the needs of the commercial fishing industry, and a class C bufferyard is provided along the boundary of CFSD 8 with any residential land use district; and
d. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 8 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Marinas and boat chartering, provided that:

1 The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;

2 The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing products;
3 Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pumpout facility is available on-site, and where the waste is treated in a permitted sewage treatment facility;
4 All outside storage areas are screened from adjacent resident uses by a solid fence, wall or hedge at least six feet in height;
5 Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;
6 There is no displacement of existing commercial fishing dockage or area;
7 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
8 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps.

b. Restaurants, dive shops, and other commercial uses under 1,600 square feet per shop, provided that:

1 There is no displacement of existing commercial fishing dockage or area;
2 No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
3 No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps. Such uses shall be considered subordinate to the existing principal commercial fishing use, and shall only be allowed so long as the principal fishing use remains and is integrated into the design of the development and would reinforce the commercial fishing industry.

c. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1 The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2 The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3 In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
iv. A solid fence may be required upon determination by the Planning Director.

(h) CFSD 12 (located on Big Pine):

(1) The following uses are permitted as of right in Commercial Fishing Special District 12:

a. Commercial fishing, provided the use does not involve a vessel that draws more than six feet of water;
b. Detached dwellings;
c. Accessory uses;
d. Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
e. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
f. Home occupations special use permit required; commercial fishing does not require a special use permit; and
g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 12 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Attached dwellings, provided that the structures are separated from existing detached dwellings by 100 feet or a class D bufferyard; and
b. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 12, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

    i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
    ii. The required trees shall be evenly distributed throughout the planting bed;
    iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
    iv. A solid fence may be required upon determination by the Planning Director.

(i) CFSD 13 (located on Summerland Key):

(1) The following uses are permitted as of right in Commercial Fishing Special District 13:

(a) Commercial fishing, provided the use does not involve a vessel that draws more than six feet of water;
(b) Detached dwellings;
(c) Accessory uses;
(d) Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
(e) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
(f) Home occupations – special use permit required; commercial fishing does not require a special use permit; and
(g) Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 13 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Attached dwellings, provided that the total floor area of residential uses in CFSD 13does not exceed 25 percent of the land area in CFSD 13;

b. Commercial retail and restaurant uses, of low and medium intensity, provided that the goods and services are related to or supportive of the commercial fishing industry and the use does not involve a vessel that draws more than six feet of water;
c. Light industrial uses, including marine repair services, provided that such uses are intended only to serve the needs of the commercial fishing industry, provided the use does not involve a vessel that draws more than six feet of water;
d. Mobile homes; and
e. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 13 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Marinas and boat chartering, provided that:

1. The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
2. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing products;
3. Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pumpout facility is available on-site, and where the waste is treated in a permitted sewage treatment facility;
4. All outside storage areas are screened from adjacent resident uses by a solid fence, wall or hedge at least six feet in height;
5. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;
6. There is no displacement of existing commercial fishing dockage or area;
7. No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
8. No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps.

b. Restaurants, dive shops, and other commercial uses under 1,600 square feet per shop, provided that:

1. There is no displacement of existing commercial fishing dockage or area;
2. No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
3. No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps. Such uses shall be considered subordinate to the existing principal

commercial fishing use, and shall only be allowed so long as the principal fishing use remains and is integrated into the design of the development and would reinforce the commercial fishing industry.

c. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in Chapter 114, Article IV; and
iv. A solid fence may be required upon determination by the Planning Director.

(j) CFSD 16 (located on Conch Key):

(1) The following uses are permitted as of right in Commercial Fishing Special District 16:

a. Commercial fishing;
b. Accessory uses;
c. Mobile homes;
d. Detached dwellings;
e. Vacation rental use if a special vacation rental permit is obtained in accordance with section 134-1.
f. Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
g. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
h. Home occupations – special use permit required; commercial fishing does not require a special use permit; and

i. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 16 subject to the standards and procedures set forth in Chapter 110, Article III:

a. Attached dwellings, provided that the total floor area of residential uses in CFSD 16 does not exceed 25 percent of the land area in CFSD 16.
b. Commercial retail and restaurant uses, of low and medium intensity, provided that the goods and services are related to or supportive of the commercial fishing industry.
c. Light industrial uses, marine repair services, provided that such uses are intended only to serve the needs of the commercial fishing industry.
d. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 16, subject to the standards and procedures set forth in chapter 110, article III:

a. Marinas and boat chartering, provided that:

1. The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
2. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
3. Vessels docked or stored shall not be used for live-aboard purposes, except when a permitted sewage pumpout facility is available on-site and where the waste is treated in a permitted sewage treatment facility;
4. All outside storage areas are screened from adjacent residential uses by a solid fence, wall or hedge at least six feet in height;
5. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;
6. There is no displacement of existing commercial fishing dockage or area;
7. No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
8. No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as trap storage and manufacture of traps.

b. Restaurants, dive shops, and other commercial uses of less than 1,600 square feet of floor area, provided that:

1. There is no displacement of existing commercial fishing dockage or area;

2. No less than 50 percent of the dock area shall be devoted exclusively to commercial fishing; and
3. No less than 50 percent of the district land area shall be used for other commercial fishing activities, such as the storage and manufacture of traps;

c. New antenna-supporting structures, pursuant to section 146-5(a); and

d. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
iv. A solid fence may be required upon determination by the Planning Director.

(4) In order to provide for the special needs of the commercial fishing industry, while ensuring general compliance with plan requirements and maintaining good environmental quality and community character, CFSD 16 is given the following special considerations:

a. CFSD 16, under minor conditional use, may vary the requirements of the district;
b. Temporary uses specifically involving trap construction, maintenance and repair are hereby exempted from maximum FAR and minimum open space requirements;
c. Sanitary toilet facilities may be provided by using approved portable units;
d. Non-shoreline and shoreline setbacks may be varied by the Planning Director upon a written recommendation by the County Biologist that stormwater runoff

can be appropriately controlled due to the provisions of new gutters, berms or similar devices;

e. The vegetated bufferyard requirements may be varied to include fences or natural vegetation except when abutting residential districts;

f. Lighting requirements may be reduced or waived where the Planning Director and County Biologist agree that light intrusion, either to adjoining properties or waterfront areas, will have no adverse effect on community character or habitat; and

g. Except for commercial retail and wholesale operations, parking requirements may be met by the provision of one parking or loading space for each individual lot of 6,000 square feet or less. Larger lots or parcels shall proportionately meet this same requirement.

(k) CFSD 17 (located on Old Boca Chica Road):

(1) The following uses are permitted as of right in Commercial Fishing Special District 17:

a. Commercial fishing, provided the use does not involve a vessel that draws more than two feet of water and the vessels are restricted to outboard engines only;

b. Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);

c. Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);

d. Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);

e. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);

f. Home occupations – special use permit required; commercial fishing does not require a special use permit; and

g. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 17, subject to the standards and procedures set forth in chapter 110, article III:

a. Detached residential dwellings, provided that the total floor area of residential uses in CFSD 17 does not exceed 25 percent of the land area in CFSD 17;

b. Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and

c. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f);

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 17, subject to the standards and procedures set forth in chapter 110, article III:

a. New antenna-supporting structures, pursuant to section 146-5(a); and
b. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
iv. A solid fence may be required upon determination by the Planning Director.

(l) CFSD 20 (located on Little Torch Key):

(1) The following uses are permitted as of right in Commercial Fishing Special District 20:

a. Commercial fishing, provided the use does not involve a vessel that draws more than three (3) feet of water;
b. Commercial retail uses, limited to wholesale sales of catch**;**
c. Detached dwellings;
d. Replacement of mobile homes existing as of July 18, 1995 (adoption of Ordinance 026-1995);
e. Accessory uses;
f. Replacement of docks in existence as of July 18, 1995 (adoption of Ordinance 026-1995);
g. Home occupations – special use permit required; commercial fishing does not require a special use permit;

h. Collocations on existing antenna supporting structures, pursuant to section 146-5(c);
i. Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
j. Wastewater nutrient reduction cluster systems that serve less than ten residences.

(2) The following uses are permitted as minor conditional uses in Commercial Fishing Special District 20, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(3) The following uses are permitted as major conditional uses in Commercial Fishing Special District 20, subject to the standards and procedures set forth in Chapter 110, Article III:

a. Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district provided that:

1. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
2. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
3. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

i. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
ii. The required trees shall be evenly distributed throughout the planting bed;
iii. The planting bed shall be installed as set forth in chapter 114, article IV; and
iv. A solid fence may be required upon determination by the Planning Director.

Sec. 130-80. Commercial Fishing Village District (CFV).

(a) The following uses are permitted as of right in the commercial fishing village district:

(1) Commercial fishing;
(2) Detached dwellings;
(3) Accessory uses;
(4) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(5) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(6) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(7) Home occupations—Special use permit required; commercial fishing does not require a special use permit.

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

(1) Attached dwellings, provided that the structures are separated from existing detached dwellings by 100 feet or a class D bufferyard;
(2) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(3) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(4) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(c) In order to provide for the special needs of the commercial fishing industry, while ensuring general compliance with plan requirements and maintaining good environmental quality and community character, the CFV District is given the following special considerations:

(1) CFV, under minor conditional use, may vary the requirements of the district;
(2) Temporary uses specifically involving trap construction, maintenance and repair are hereby exempted from maximum FAR and minimum open space requirements;
(3) Sanitary toilet facilities may be provided by using approved portable units;
(4) Non-shoreline and shoreline setbacks may be varied by the Planning Director upon a written recommendation by the County Biologist that stormwater runoff can be appropriately controlled due to the provisions of new gutters, berms or similar devices;
(5) The vegetated bufferyard requirements may be varied to include fences or natural vegetation except when abutting residential districts;
(6) Lighting requirements may be reduced or waived where the Planning Director and County Biologist agree that light intrusion, either to adjoining properties or waterfront areas, will have no adverse effect on community character or habitat; and
(7) Except for commercial retail and wholesale operations, parking requirements may be met by the provision of one parking or loading space for each individual lot of 6,000

square feet or less. Larger lots or parcels shall proportionately meet this same requirement.

Sec. 130-81. Destination Resort District (DR).

(a) The following uses are permitted as of right in the Destination Resort district:

(1) Detached dwellings;
(2) Vacation rental use if a special vacation rental permit is obtained under the regulations established in section 134-1;
(3) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(4) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(5) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(6) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(7) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

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

(1) Hotels, provided that:

a. The hotel has restaurant facilities on the premises that will accommodate no less than one-third of all hotel guests at maximum occupancy at a single serving;
b. There are at least two satellite eating and drinking facilities, each accommodating at least 25 persons;
c. A separate meeting/conference and entertainment area that can also function as a banquet facility;
d. A lobby that provides 24-hour telephone and reservation service;
e. Active and passive recreation land-based activities are available, with a minimum of tennis courts or racquetball courts, or a spa/exercise room, provided at the standards given below and at least two additional active and one additional passive recreational facility, including, but not limited to, the following:

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Active Recreational Facilities	
Tennis court	1/25 units
Racquetball court	1/25 units
Spa/exercise room, of no less than 500 square feet	1/150 units
Dance floor	1/hotel
Playfield/playground	1/150 units
Miniature golf course	1/hotel
Golf course	1/hotel
Shuffleboard court, or other court games	2/50 units
Fitness course	1/hotel
Passive Recreational Facilities	
Nature trail walk	1/hotel
Game room	1/150 units
Garden area	1/hotel
Observation area	1/hotel
Other uses may be substituted for these with the written approval of the director of planning stating the standards used and the manner in which guests will be served by such facilities. The director of planning shall base his decision on generally accepted industry standards for comparable destination resorts;	

f. Active and passive water-oriented recreational facilities are available, a minimum of a swimming pool, or swimming areas, at the rate of seven square feet of water surface (excluding hot tubs and Jacuzzi) per hotel room (this requirement may be converted to linear feet of shoreline swimming area at a ratio of one linear foot of beach per seven square feet of required water surface);

g. Access to U.S. 1 is by way of:

    1. An existing curb cut;
    2. A signalized intersection; or
    3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

h. Each hotel establishes and maintains shuttle transport services to airports and tourist attractions to accommodate ten percent of the approved floor area in guest rooms; and such housing shall be of any of the following types: dormitory, studio, one bedroom, two bedrooms and shall be in addition to the approved hotel density and shall be used exclusively by employees qualifying under the employee housing provisions elsewhere in this chapter;

i. On-site employee housing living space is provided in an amount equal to ten percent of the approved floor area in guest rooms; and such housing shall be of

any of the following types: dormitory, studio, one bedroom, two bedrooms and shall be in addition to the approved hotel density and shall be used exclusively by employees qualifying under the employee housing provisions elsewhere in this chapter; and

j. Commercial retail is provided at a minimum of 200 square feet to include convenience retail, food sales and gifts in one or more sites, excluding restaurants as required by subsection (b)(1) of this section, and in addition one and 1.3 square feet commercial retail per each guest room greater than 150 rooms. Additional commercial retail may be provided subject to the floor area ratio limitations of this chapter. Commercial retail may consist of dive shops, boat rentals, gift shops, barber/beauty services, travel agencies, provided that there is no extension signage advertising these amenities to the general public. Water-related services and activities shall be located immediately proximate to the water unless otherwise prohibited.

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

(1) Marinas, provided that:

a. There are a minimum of seven boat slips, but the total number of boats stored on-site or elsewhere for guests or employees shall be no greater than one per hotel room;
b. The parcel for development has access to water at least four feet below mean sea level at mean low tide;
c. The sale of goods and services is limited to fuel, food, boating, and sport fishing products;
d. All boat storage shall be confined to wet slips or enclosed dry storage;
e. All storage areas are screened from adjacent uses by a solid fence, wall, or hedge of at least six feet in height; and elevated racks, frames, or structures shall be enclosed on at least three sides from the ground to the highest point of the roof;
f. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet; and
g. Live-aboard vessels are prohibited;

(2) Attached and detached dwellings, designated as employee housing as provided for in section 139, provided that:

a. They are built for and occupied by employees of the destination resort facilities;
b. The total area is no less that ten percent of the approved floor area in guest rooms of the resort/hotels within the development;
c. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and

d. The parcel proposed for development is separated from any established residential use by a class C bufferyard;

(3) Attached dwelling units;
(4) New antenna-supporting structures, pursuant to section 146-5(a);
(5) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district, provided that:

a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
b. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
c. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1. One native canopy tree for every 25 linear feet of screening structure and one understory tree for every ten linear feet of screening structure;
2. The required trees shall be evenly distributed throughout the planting bed;
3. The planting bed shall be installed as set forth in chapter 114, article IV; and
4. A solid fence may be required upon determination by the planning director.

Sec. 130-82. Industrial District (I).

(a) The following uses are permitted as of right in the Industrial district:

(1) Restaurants of less than 5,000 square feet of floor area;
(2) Office uses of less than 5,000 square feet of floor area;
(3) Attached and detached dwellings involving less than six units, designated as employee housing as provided for in section 139-1;
(4) Commercial apartments involving less than six dwelling units;
(5) Commercial fishing;
(6) Institutional uses;
(7) Light industrial uses;
(8) Public buildings and uses;
(9) Accessory uses;
(10) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(11) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(12) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(13) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and

(14) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

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

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

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

(2) Commercial apartments involving six or more dwelling units, provided that:

a. The hours of operation of the commercial uses proposed in conjunction with the apartments are compatible with residential uses; and
b. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(3) Attached and detached dwellings involving six or more units, designated as employee housing as provided for in section 139-1;
(4) New antenna-supporting structures, pursuant to section 146-5(a); and
(5) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in another land use district land, provided that:

a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
b. The wastewater treatment facility, wastewater treatment collection systems, and accessory uses shall be screened by structures designed to:

1. Be architecturally consistent with the character of the surrounding community;
2. Minimize the impact of any outdoor storage, temporary or permanent; and
3. A solid fence may be required upon determination by the planning director;

c. Where a district boundary buffer is not required as set forth in chapter 114, article V, a planting bed, eight feet in width, shall be established to buffer the facility, providing the following:

1. One native canopy tree for every 25 linear feet of fence;
2. One understory tree for every ten linear feet of fence;
3. The required trees shall be evenly distributed throughout the planting bed; and
4. The planting bed shall be installed as set forth in chapter 114, article IV.

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

(1) Marinas, provided that:

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

(2) Resource extraction, provided that:

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

(3) Heavy industrial uses, provided that:

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

Sec. 130-83. Improved Subdivision District (IS).

(a) The following uses are permitted as of right in the improved subdivision district:

(1) In those improved subdivision districts with no subdistrict indicator, detached dwellings of all types;
(2) IS-M: In those improved subdivision districts with an M subdistrict indicator, only detached dwellings of masonry appearance;
(3) IS-D: In those improved subdivision districts with a D subdistrict indicator:

a. Detached dwellings; and
b. Duplexes;

(4) Home occupations—Special use permit required;
(5) Accessory uses;
(6) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(7) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(8) Wastewater nutrient reduction cluster systems that serve less than ten residences.

(b) Vacation rental use is prohibited in all IS districts and subdistricts, except in:

(1) IS-V districts (as set forth in section 130-84); and
(2) In gated communities that have:

a. Controlled access; and
b. A homeowner's or property owner's association that expressly regulates or manages vacation rental uses.

(c) The following uses are permitted as minor conditional uses in the improved subdivision district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Parks;
(2) Institutional uses limited to schools; and
(3) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(d) The following uses are permitted as major conditional uses in the improved subdivision district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e);
(2) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district, provided that:

a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
b. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
c. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1. One native canopy tree for every 25 linear feet of screening structure; and one understory tree for every ten linear feet of screening structure;
2. The required trees shall be evenly distributed throughout the planting bed;
3. The planting bed shall be installed as set forth in chapter 114, article IV; and
4. A solid fence may be required upon determination by the planning director.

(e) The following lawfully established nonresidential uses in the Improved Subdivision land use district, which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs, Section 9-212) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III:

(1) Commercial retail, office, or any combination thereof, of low and medium intensity, of less than 2,500 square feet of floor area, provided that:

a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;
b. The structure must be located within 200 feet of the centerline of U.S. 1;
c. The commercial retail use does not involve the sale of petroleum products;
d. The commercial retail use does not involve the outside storage or display of goods or merchandise;
e. There is no direct access to U.S. 1 from the parcel of land on which the commercial retail use is to be located;
f. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C bufferyard;
g. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C bufferyard;
h. No signage other than one identification sign of no more than four square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1; and
i. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

(2) Marinas, provided that:

a. The parcel proposed for development has continuous access to water of depths of at least four (4) feet below mean sea level at mean low tide;

b. The use does not involve the sale of goods or services other than private clubs, sport fishing charters, boat dockage and storage;
c. All boat storage is limited to surface storage on trailers or skids and no boat or other equipment is stored on any elevated rack, frame or structure;
d. Vessels docked or stored shall not be used for live-aboard purposes;
e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and
f. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

Sec. 130-84. Improved Subdivision District—Vacation Rental District (IS-V).

In addition to the as of right and conditional uses listed above in section 130-83, vacation rental uses are allowed as of right (subject to the regulations established in section 134-1) in those improved subdivision—vacation rental districts with the sub-indicator V (vacation rental). A map amendment designating a contiguous parcel as IS-V may be approved, provided that the map amendment application (and subsequent building permit applications and special vacation rental permit applications) meet the following standards, criteria and conditions:

(1) The IS-V designation is consistent with the 2010 Comprehensive Plan and there is no legitimate public purpose for maintaining the existing designation;
(2) The IS-V designation allowing vacation rental use does not create additional trips or other adverse traffic impacts within the remainder of the subdivision or within any adjacent IS district;
(3) The parcel to be designated IS-V must contain sufficient area to prevent spot-zoning of individual parcels (i.e., rezonings should not result in spot-zoned IS-V districts or result in spot-zoned IS districts that are surrounded by IS-V districts). Unless the parcel to be rezoned contains the entire subdivision there will be a rebuttable presumption that spot-zoning exists, but the board of county commissioners may rebut this presumption by making specific findings supported by competent, substantial evidence that:

a. The designation preserves, promotes and maintains the integrity of surrounding residential districts and overall zoning scheme or comprehensive plan for the future use of surrounding lands;
b. Does not result in a small area of IS-V within a district that prohibits vacation rentals;
c. The lots or parcels to be designated IS-V are all physically contiguous and adjacent to one another and do not result in a narrow strip or isolate pockets or spots of land that are not designated IS-V, or which prohibit vacation rentals; and

d. The IS-V designation is not placed in a vacuum or a spot on a lot-by-lot basis without regard to neighboring properties, but is a part of an overall area that allows vacation rentals or similar compatible uses;

(4) In addition to the requirements contained in section 114-126 (district boundaries), an IS-V district shall be separated from any established residential district that does not allow tourist housing or vacation rental uses by no less than a class C bufferyard;
(5) Vacation rental use is compatible with established land uses in the immediate vicinity of the parcel to be designated IS-V; and
(6) Unless a map amendment is staff generated (i.e., initiated by the county), an application for a map amendment to IS-V shall be authorized by the property owners of all lots or parcels included within the area of the proposed map amendment.

Sec. 130-85. Maritime Industries District (MI).

(a) The following uses are permitted as of right in the maritime industries district:

(1) Light industrial uses;
(2) Commercial retail, restaurant uses, or any combination thereof, of less than 5,000 square feet of floor area;
(3) Office uses of less than 5,000 square feet of floor area;
(4) Heavy industrial uses;
(5) Commercial apartments involving less than six dwelling units, but tourist housing uses, vacation rental use, of commercial apartments is prohibited;
(6) Attached and detached dwellings involving less than six units, designated as employee housing as provided for in section 139-1;
(7) Commercial fishing;
(8) Institutional uses;
(9) Public buildings and uses;
(10) Accessory uses;
(11) Vacation rental use of any nonconforming dwelling units if a special vacation rental permit is obtained under the regulations established in section 134-1;
(12) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(13) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(14) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(15) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(16) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

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

(1) Commercial apartments involving more than six dwelling units, provided that:

a. The hours of operation of the commercial uses proposed in conjunction with the apartments are compatible with residential uses;
b. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

c. Tourist housing uses, including vacation rental use of commercial apartments is prohibited;

(2) Attached and detached dwellings involving six or more units, designated as employee housing as provided for in section 139-1;
(3) Hotels of fewer than 50 rooms, provided that one or more of the following amenities are available to guests:

1. Swimming pool;
2. Marina; and
3. Tennis courts; and

(4) New antenna-supporting structures, pursuant to section 146-5(a).

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

(1) Hotels providing 50 or more rooms, provided that:

a. The hotel has restaurant facilities on the premises;
b. One or more of the following amenities are available to guests:

1. Swimming pool; or
2. Docking facilities; or
3. Tennis courts; and

c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(2) Marinas, provided that:

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

(3) Agricultural uses, limited to mariculture, provided that:

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

(4) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district, provided that:

a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
b. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and minimize the impact of any outdoor storage, temporary or permanent; and
c. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1. One native canopy tree for every 25 linear feet of screening structure;
2. One understory tree for every ten linear feet of screening structure and the required trees shall be evenly distributed throughout the planting bed;
3. The planting bed shall be installed as set forth in chapter 114, article IV; and
4. A solid fence may be required upon determination by the planning director.

Sec. 130-86. Military Facilities District (MF).

(a) The following uses are permitted as of right in the military facilities district:

(1) Detached dwellings;
(2) Attached dwellings;
(3) Commercial retail and restaurant uses;
(4) Institutional uses;

(5) Institutional residential;
(6) Offices;
(7) Public buildings or uses;
(8) Airports;
(9) Accessory uses;
(10) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(11) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(12) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(13) Satellite earth stations, as accessory uses, pursuant to section 146-5(f); and
(14) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e).

(b) The following uses are permitted as major conditional uses in the military facilities district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Marinas, provided that:

a. The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products; and
c. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;

(2) New antenna-supporting structures, pursuant to section 146-5(a);

Sec. 130-87. Mainland Native Area District (MN).

All development permitted in the mainland native area district shall comply with applicable rules and regulations of the Big Cypress National Preserve.

(a) The following uses are permitted as of right in the mainland native area district:

(1) Detached dwellings;
(2) Beekeeping;
(3) Accessory uses;
(4) Home occupations—Special use permit required;
(5) Tourist housing uses, including vacation rental uses, are prohibited;
(6) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c); and
(7) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Educational and research centers, including campground spaces, provided that:

a. No more than two camping spaces are provided per acre;
b. No development of any kind is permitted in wetlands, except unenclosed, elevated structures on pilings or poles;
c. No buildings are permitted, enclosed or otherwise except for buildings devoted to educational, research or sanitary purposes of no more than 1,000 square feet per acre and not more than 10,000 square feet in any single campground; and
d. The site proposed for the center is at least five acres.

(2) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

Sec. 130-88. Mixed Use District (MU).

(a) The following uses are permitted as of right in the mixed use district:

(1) Detached dwellings;
(2) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of less than 2,500 square feet of floor area;
(3) Institutional residential uses, involving less than ten dwelling units or rooms;
(4) Commercial apartments involving less than six dwelling units, but tourist housing use, including vacation rental use, of commercial apartments is prohibited;
(5) Commercial recreational uses limited to:

a. Bowling alleys;
b. Tennis and racquet ball courts;
c. Miniature golf and driving ranges;
d. Theaters;
e. Health clubs; and
f. Swimming pools;

(6) Commercial fishing;
(7) Institutional uses;
(8) Public buildings and uses;
(9) Home occupations—Special use permit required;
(10) Parks;
(11) Accessory uses;
(12) Vacation rental use of detached dwelling units is permitted if a special vacation rental permit is obtained under the regulations established in section 134-1;
(13) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(14) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);

(15) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(16) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e);
(17) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f);
(18) Attached and detached dwellings involving less than six units, designated as employee housing as provided for in section 139-1; and
(19) Wastewater nutrient reduction cluster systems that serve less than ten residences.

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

(1) Attached dwellings, provided that:

a. The total number of units does not exceed four; and
b. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development;

(2) Commercial recreation uses (indoor and outdoor), excluding amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. All outside lighting is designed and located so that light does not shine directly on any established residential use;

(3) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 2,500 but less than 10,000 square feet of floor area, provided that access to U.S. 1 by way of:

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

(4) Commercial retail, office, restaurant uses, or any combination thereof, of high intensity, and of less than 2,500 square feet of floor area, provided that access to U.S. 1 is by way of:

a. An existing curb cut;
b. A signalized intersection; or

c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(5) Commercial apartments involving six to 18 dwelling units, provided that:

a. The hours of operation of the commercial uses are compatible with residential uses;
b. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

c. Tourist housing uses, including vacation rental uses, of commercial apartments are prohibited;

(6) Institutional residential uses involving ten or more dwelling units or rooms, providing that:

a. The use is compatible with land use established in the immediate vicinity of the parcel proposed for development;
b. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

c. Tourist housing uses, including vacation rental use, of institutional dwelling units is prohibited;

(7) Hotels of fewer than 50 rooms, provided that one or more of the following amenities is available to guests:

a. Swimming pool; or
b. Docking facilities; or
c. Tennis courts;

(8) Campgrounds and recreational vehicle parks, provided that:

a. The parcel proposed for development has an area of at least five acres;
b. If the use involves the sale of goods and services, other than the rental of camping sites or recreational vehicle parking spaces, such use does not exceed 1,000 square feet and is designed to serve the needs of the campground; and

c. The parcel proposed for development is separated from all adjacent parcels of land by at least a class C bufferyard;

(9) Light industrial uses, provided that:

a. The parcel proposed for development is less than two acres;
b. The parcel proposed for development is separated from any established residential use by at least a class C bufferyard; and
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height;

(10) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(11) Attached and detached dwellings involving six to 18 units, designated as employee housing as provided for in section 139-1.

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

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 10,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail, office, restaurant uses, or any combination thereof, of high intensity, and of greater than 2,500 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(3) Attached dwelling units, provided that:

a. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard;

(4) Marinas, provided that:

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

(5) Hotels providing 50 or more rooms, provided that:

a. The hotel has restaurant facilities on the premises;
b. One or more of the following amenities are available to guests:

1. Swimming pool; or
2. Docking facilities; or
3. Tennis courts; and

c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet; and

d. The parcel proposed for development is separated from any established residential use by a class C bufferyard;

(6) Heliports or seaplane ports, provided that:

a. The heliport is associated with a governmental service facility, a law enforcement element or a medical services facility;
b. The heliport or seaplane port is a Federal Aviation Administration certified landing facility;
c. The landing and departure approaches do not pass over established residential uses or known bird rookeries;
d. If there are established residential uses within 500 feet of the parcel proposed for development, the hours of operation for non-emergency aircraft shall be limited to daylight; and
e. The use is fenced or otherwise secured from entry by unauthorized persons;

(7) Light industrial uses, provided that:

a. The parcel proposed for development is greater than two acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. The use is compatible with land uses established in the immediate vicinity of the parcel proposed for development;

(8) Commercial recreation uses (indoor and outdoor), including amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land has an area of at least two acres;
b. The parcel is separated from residential districts IS, SR, SR-L, SS, UR, URM, URM-L or established residential uses by at least a class E buffer; and
c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(9) Agricultural uses, limited to mariculture;
(10) New antenna-supporting structures, pursuant to section 146-5(a);
(11) Attached and detached dwellings involving more than 18 units, designated as employee housing as provided for in section 139-1;
(12) Wastewater treatment facilities and wastewater treatment collection systems serving uses located in any land use district, provided that:

a. The wastewater treatment facility and wastewater treatment collection systems are in compliance with all federal, state, and local requirements;
b. The wastewater treatment facility, wastewater treatment collection systems and accessory uses shall be screened by structures designed to be architecturally consistent with the character of the surrounding community and shall minimize the impact of any outdoor storage, temporary or permanent; and
c. In addition to any district boundary buffers set forth in chapter 114, article V, a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1 One native canopy tree for every 25 linear feet of screening structure;
2 One understory tree for every ten linear feet of screening structure and the required trees shall be evenly distributed throughout the planting bed;
3 The planting bed shall be installed as set forth in chapter 114, article IV; and
4 A solid fence may be required upon determination by the planning director.

Sec. 130-89. Native Area District (NA).

(a) The following uses are permitted as of right in the native area district:

(1) Detached dwellings;
(2) Beekeeping;
(3) Home occupations—Special use permit required;
(4) Accessory uses;
(5) Tourist housing uses, including vacation rental uses, are prohibited;
(6) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(7) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b); and
(8) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Attached dwelling units, provided that:

a. The total number of units does not exceed four; and
b. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development;

(2) Public buildings and uses, provided that:

a. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
b. The parcel proposed for development is at least two acres;

(3) Agricultural uses, provided that:

a. The use is compatible with land uses established in the immediate vicinity of the parcel proposed for development;
b. The parcel proposed for development is separated from any established residential uses by at least a class C bufferyard; and
c. All outside storage areas are screened from adjacent uses by a solid fence, wall of hedge of at least six feet in height;

(4) Parks (passive);
(5) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(6) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(7) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Attached dwelling units, provided that:

a. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard.

(d) The following lawfully established nonresidential uses in the Native Area land use district, which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDR's, Section 9-209) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III.

(1) Marinas, provided that:

a. The parcel has continuous access to water of depths of at least four (4) feet below mean sea level at mean low tide;
b. The use does not involve the sale of goods or services other than boat dockage and storage;
c. All boat storage is limited to surface storage on trailers or skids and no boat or other equipment is stored on any elevated rack, frame or structure;
d. Vessels docked or stored shall not be used for live-aboard purposes;
e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height;
f. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

(2) Solid waste facility, provided that:

a. The parcel of land is at least 40 acres;
b. All landfill activity occurs no closer than 150 feet to any property line and at least a class F buffer is provided within this setback;
c. No fill shall exceed 35 feet in height from the original grade of the property;
d. Such operations fully comply with F.S. § 403.701 et seq.;
e. A future reclamation plan for the landfill site is presented;

f. The incinerator is located so that its operations do not adversely affect surrounding properties;
g. Road access to the side from U.S. 1 is limited to traffic serving the landfill; and
h. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

Sec. 130-90. Offshore Island District (OS).

(a) The following uses are permitted as of right in the offshore island district:

(1) Detached dwellings;
(2) Camping, for the personal use of the owner of the property on a temporary basis;
(3) Beekeeping;
(4) Accessory uses;
(5) Home occupations—Special use permit required;
(6) Tourist housing uses that were established (and held valid state public lodging establishment licenses) prior to January 1, 1996. Vacation rental use, of a dwelling unit in existence as of January 1, 2000, if a special vacation rental permit is obtained under the regulations established in section 134-1;
(7) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c); and
(8) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(b) The following is permitted as a minor conditional use in the offshore island district (OS), subject to the standards and procedures set forth in chapter 110, article III:

(1) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

Sec. 130-91. Park and Refuge District (PR).

(a) The following uses are permitted as of right in the park and refuge district:

(1) Parks;
(2) Institutional uses;
(3) Public buildings and uses;
(4) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(5) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(6) Attached wireless communications facilities as accessory uses, pursuant to section 146-5(d); and
(7) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

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

(1) Campgrounds and recreational vehicle parks, provided that:

a. The parcel proposed for development has an area of at least five acres; and
b. The use does not involve the sale of goods and services other than rental of camping sites, recreational vehicle parking spaces or the sale of goods and services, limited to the needs of the campers, not exceeding 1,000 square feet;

(2) Hotels of fewer than 12 rooms, provided that:

a. The parcel proposed for development has an area of at least one acre;
b. All signage is limited to that permitted for a residential use; and
c. The parcel proposed for development is separated from any established residential use by at least a class D bufferyard; and

(3) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e).

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

(1) Marinas, provided that:

a. The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
b. The use does not involve the sale of goods and services other than private clubs, sport fishing charters, boat dockage and storage;
c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;
d. Vessels docked or stored shall not be used for live-aboard purposes;
e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height; and
f. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet.

Sec. 130-92. Recreational Vehicle District (RV).

(a) The following uses are permitted as of right in the recreational vehicle district:

(1) Recreational vehicle parks. RV spaces are intended for use by traveling recreational vehicles. RV spaces may be leased, rented or occupied by a specific, individual recreational vehicle, for a term of less than 28 days, but placement of a specific, individual recreational vehicle (regardless of vehicle type or size) within a particular

RV park for occupancies or tenancies of six months or more is prohibited. Recreational vehicles may be stored, but not occupied, for periods of six months or greater only in an approved RV storage area (designated on a site plan approved by the director of planning) or in another appropriate district that allows storage of recreational vehicles. RV storage areas must meet all land development regulations, floodplain management regulations and building code requirements for storage of recreational vehicles;

(2) Commercial retail, restaurant uses, or any combination thereof, of less than 2,500 square feet of floor area;

(3) Accessory uses;

(4) Commercial apartments. However, there shall be no more than one commercial apartment unit per three (3) RV spaces up to ten percent (10%) of total spaces allowed or in existence;

(5) Vacation rental use of nonconforming detached and attached dwelling units constructed prior to February 16, 2011, if a special vacation rental permit is obtained where necessary under the regulations established in section 134-1;

(6) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);

(7) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c) "Collocations on existing supporting structure"; and

(8) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f) "Satellite earth stations."

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

(1) Hotels providing less than 50 rooms, provided that one or more of the following amenities are available to guests:

a. Swimming pool; or
b. Docking facilities; or
c. Tennis court.

(2) Attached or detached seasonal residential units, provided that:

a. All units within the RV land use district shall be subject to the terms and conditions of a Development Agreement as defined in sections 110-132, 110-133 and further defined below.
b. The units meet all land development regulations, floodplain management regulations, building code, and life safety requirements for the development of transient structures;
c. The development of seasonal residential units shall occur only in gated RV parks with a managing entity responsible for evacuation.
d. The proposed site is subject to an approved development agreement with Monroe County detailing at a minimum:

1 All proposed transitional recreational vehicle units;

2 A proposed site plan;
3 A design strategy demonstrating separation of transient unit types on the property for life safety as well as design that is consistent with community character, and any applicable Monroe County design guidelines;
4 A statement of commitment for the park to adhere to transient evacuation regulations;
5 A phasing plan, as appropriate, detailing timelines for project completion;
6 Access to US 1 is by way of:

i. An existing curb cut;
ii. A signalized intersection; or
iii. A curb cut that is separated from any other curb cut on the same side of US 1 by at least 400 feet.

(3) Parks;
(4) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d) "Attached wireless communications facilities;"
(5) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e) "Stealth wireless communications facilities;" and
(6) Satellite earth stations greater than or equal to two (2) meters in diameter, as accessory uses, pursuant to section 146-5(f) "Satellite earth stations."

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

(1) Hotels providing 50 or more rooms, provided that:

a. The hotel has restaurant facilities on the premises;
b. One or more of the following amenities are available to guests:

1 Swimming pool; or
2 Docking facilities; or
3 Tennis courts; and

c. Access to US 1 is by way of:

1 An existing curb cut;
2 A signalized intersection;
3 A curb cut that is separated from any other curb cut on the same side of US 1 by at least 400 feet.

(2) Marinas, provided that:

a. The parcel proposed for development has access to water at least four feet below mean seas-level at mean low tide;

b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
c. Vessels docked or stored shall not be used for live-aboard purposes;
d. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height; and
e. The parcel proposed for development is separated from any established residential use by a class C buffer-yard.

(3) Wastewater treatment facility and wastewater treatment collection systems(s) serving (a) use(s) located in any land use district provided that:

a. The wastewater treatment facility and wastewater treatment collection system(s) is (are) in compliance with all federal, state, and local requirements; and
b. The wastewater treatment facility, wastewater treatment collection system(s) and accessory uses shall be screened by structures(s) designed to be architecturally consistent with the character of the surrounding community and minimize the impact of any outdoor storage, temporary or permanent; and
c. In addition to any district boundary buffers set forth in chapter 114, article V a planting bed, eight feet in width, to be measured perpendicular to the exterior of the screening structure shall be established with the following:

1 One native canopy tree for every 25 linear feet of screening structure and one understory tree for every ten linear feet of screening structure; and
2 The required trees shall be evenly distributed throughout the planting bed; and
3 The planting bed shall be installed as set forth in chapter 114, article IV; and
4 A solid fence may be required upon determination by the planning director.

Sec. 130-93. Suburban Commercial District (SC).

(a) The following uses are permitted as of right in the Suburban Commercial district:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of less than 2,500 square feet of floor area;
(2) Institutional residential uses, involving less than ten dwelling units or rooms;
(3) Commercial apartments involving less than six dwelling units;
(4) Commercial recreation uses limited to:

a. Bowling alleys;
b. Tennis and racquet ball courts;
c. Miniature golf and driving ranges;
d. Theaters;
e. Health clubs; and
f. Swimming pools;

(5) Institutional uses;
(6) Public buildings and uses;
(7) Accessory uses;
(8) Vacation rental use of nonconforming detached and attached dwelling units, if a special vacation rental permit is obtained under the regulations established in section 134-1;
(9) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(10) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(11) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(12) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e);
(13) Satellite earth stations, as accessory uses, pursuant to section 146-5(f);
(14) Attached and detached dwellings involving less than six units, designated as employee housing as provided for in section 139-1; and
(15) Wastewater nutrient reduction cluster systems that serve less than ten residences.

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

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 2,500 but less than 10,000 square feet of floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and of less than 2,500 square feet in floor area; provided that access to U.S. 1 is by way of:

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

(3) Institutional residential uses involving ten to 20 dwelling units or rooms, provided that:

a. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or

3 A curb cut that is separated from another curb cut on the same side of U.S. 1 by at least 400 feet;

(4) Commercial apartments involving six to 18 dwelling units, provided that:

a. The hours of operation of the commercial uses are compatible with residential uses;
b. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or
3 A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

c. Tourist housing uses, including vacation rental uses, of commercial apartments are prohibited;

(5) Hotels of fewer than 25 rooms, provided that:

a. One or more of the following amenities are available to guests:

1 Swimming pool;
2 Docking facilities; or
3 Tennis courts;

(6) Campgrounds and recreational vehicle parks, provided that:

a. The parcel proposed for development has an area of at least five acres;
b. If the use involves the sale of goods and services, other than the rental of camping sites or recreational vehicle parking spaces, such use does not exceed 1,000 square feet and is designed to serve the needs of the campground; and
c. The parcel proposed for development is separated from all adjacent parcels of land by at least a class C bufferyard;

(7) Light industrial uses, provided that:

a. The parcel proposed for development does not have an area of greater than two acres;
b. The parcel proposed for development is separated from any established residential use by at least a class C bufferyard; and
c. All outside storage areas are screened from adjacent use by a solid fence, wall or hedge at least six feet in height;

(8) Parks; and

(9) Attached and detached dwellings involving six to 18 units, designated as employee housing as provided for in section 139-1.

(10) Commercial recreation uses (indoor and outdoor), excluding amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. All outside lighting is designed and located so that light does not shine directly on any established residential use;

(c) The following uses are permitted as major conditional uses in the Suburban Commercial district subject to the standards and procedures set forth in Chapter 110, Article III:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 10,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and greater than 2,500 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(3) Institutional residential uses involving 20 or more dwelling units or rooms; provided that:

a. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or
3 A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

b. Tourist housing uses, including vacation rental uses, of institutional residential units are prohibited;

(4) Hotels providing 25 or more rooms, provided that:

a. The hotel has restaurant facilities on the premises;
b. One or more of the following amenities are available to guests:

1 Swimming pool; or
2 Docking facilities; or
3 Tennis courts; and

c. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or
3 A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(5) Marinas, provided that:

a. The parcel proposed for development has access to water at least four feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
c. All outside storage areas are screened from adjacent uses by a fence, wall or hedge of at least six feet in height;
d. Any commercial fishing activities are limited to the landing of catch, mooring and docking of boats and storage of traps and other fishing equipment; and
e. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;

(6) Agricultural uses, limited to mariculture, provided that:

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

(7) Heliports or seaplane ports, provided that:

a. The helicopter is associated with a government service facility, a law enforcement element or a medical services facility;
b. The heliport or seaplane port is a Federal Aviation Administration certified landing facility;
c. The landing and departure approaches do not pass over established residential uses or known bird rookeries;

d. If there are established residential uses within 500 feet of the parcel proposed for development, the hours of operation for non-emergency aircraft shall be limited to daylight; and
e. The use is fenced or otherwise secured from entry by unauthorized persons;

(8) New antenna-supporting structures, pursuant to section 146-5(a);

(9) Attached and detached dwellings involving more than 18 units, designated as employee housing as provided for in section 139-1.

Sec. 130-94. Suburban Residential District (SR).

(a) The following uses are permitted as of right in the suburban residential district:

(1) Detached dwellings;
(2) Parks, excluding tennis courts and swimming pools;
(3) Beekeeping;
(4) Home occupations—Special use permit required;
(5) Accessory uses;
(6) Vacation rental use if a special vacation rental permit is obtained under the regulations established in section 134-1;
(7) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(8) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(9) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(10) Wastewater nutrient reduction cluster systems that serve less than ten residences.

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

(1) Attached dwelling units, provided that:

a. The total number of units does not exceed four per building;
b. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and
c. The parcel proposed for development is separated from any established detached residential use by a class C bufferyard;

(2) Parks, including community tennis courts and swimming pools, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and

c. All outside lighting is designed and located so that light does not shine directly on any established residential use;

(3) Public buildings and uses, provided that:

a. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
b. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or
3 A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(4) Institutional uses, provided that:

a. The parcel proposed for development is separated from any established residential uses by a class C bufferyard; and
b. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or
3 A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(5) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and

(6) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Attached dwelling units, provided that:

a. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard;

(2) Institutional residential uses, provided that:

a. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
b. Access to U.S. 1 is by way of:

1 An existing curb cut;
2 A signalized intersection; or
3 A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(3) Agricultural uses, provided that:

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

(4) Campgrounds and recreational vehicle parks, provided that:

a. The parcel proposed for development has an area of at least five acres;
b. If the use involves the sale of goods and services, other than the rental of camping sites, such use does not exceed 1,000 square feet and is designed to serve the needs of the campground; and
c. The parcel proposed for development is separated from all adjacent parcels of land by at least a class C bufferyard;

(d) The following lawfully established nonresidential and transient uses in the suburban residential land use district, which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs, Section 9-206) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III.

(1) Commercial retail, office, or any combination thereof, of low and medium intensity, and of less than 2,500 square feet of floor area, provided that:

a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;
b. The commercial retail use does not involve the sale of petroleum products;
c. The commercial retail use does not involve the outside storage or display of goods or merchandise with the exception that outside sales and display for nurseries may be permitted with the stipulation that required open space and required bufferyards may not be used for display and sales;

d. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C bufferyard;
e. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C bufferyard;
f. No signage other than one identification sign of no more than four square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive;

(2) Marinas, provided that:

a. The parcel has continuous access to water of depths of at least four (4) feet below mean sea level at mean low tide;
b. The use does not involve the sale of goods and services other than private clubs, sport fishing charters, boat dockage and storage;
c. All boat storage is limited to surface storage on trailers or skids and no boat or other equipment is stored on any elevated rack, frame or structure;
d. Vessels docked or stored shall not be used for live-aboard purposes;
e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;
f. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive.

(3) Hotels of fewer than 12 rooms, provided that:

a. The parcel proposed for development has an area of at least two acres;
b. All signage is limited to that permitted for a residential use;
c. The parcel proposed for development is separated from any established residential use by at least a class C bufferyard; and
d. The use is compatible with land uses established in the immediate vicinity of the parcel proposed for development; and
e. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive.

Sec. 130-95. Suburban Residential District (limited) (SR-L).

(a) The following uses are permitted as of right in the suburban residential district (limited):

(1) Detached dwellings;
(2) Parks;
(3) Beekeeping;
(4) Home occupations—Special use permit required;
(5) Accessory uses;
(6) Vacation rental use if a special vacation rental permit is obtained under the regulations established in section 134-1;
(7) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(8) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(9) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(10) Wastewater nutrient reduction cluster systems that serve less than ten residences.

(b) The following uses are permitted as minor conditional uses in the suburban residential district (limited) (SR-L):

(1) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(2) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

Sec. 130-96. Sparsely Settled Residential District (SS).

(a) The following uses are permitted as of right in the sparsely settled residential district:

(1) Detached dwellings;
(2) Beekeeping;
(3) Home occupations—Special use permit required;
(4) Accessory uses;
(5) Tourist housing uses, including vacation rental uses are prohibited;
(6) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(7) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(8) Wastewater nutrient reduction cluster systems that serve less than ten residences.

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

(1) Attached dwelling units, provided that:

a. The total number of units does not exceed four (4); and
b. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development;

(2) Parks, including community tennis courts and swimming pools, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. All outside lighting is designed and located so that light does not shine directly on any established residential use;

(3) Public buildings and uses, provided that:

a. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and

b. The parcel of land proposed for development is at least two acres;

(4) Parks, excluding tennis courts and swimming pools;

(5) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and

(6) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Attached dwelling units, provided that:

a. The structures are designed and located so that they are visually compatible with established residential development within 250 feet of the parcel proposed for development; and
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and

(2) Agricultural uses, provided that:

a. The use is compatible with land uses established in the immediate vicinity of the parcel proposed for development;

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

(d) The following lawfully established nonresidential uses in the Sparsely Settled land use district, which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs, Section 9-208) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III:

(1) Marinas, provided that:

a. The parcel has continuous access to water of depths of at least four (4) feet below mean sea level at mean low tide;
b. The use does not involve the sale of goods or services other than sport fishing charters, boat dockage and storage;
c. All boat storage is limited to surface storage on trailers or skids and no boat or other equipment is stored on any elevated rack, frame or structure;
d. Vessels docked or stored shall not be used for live-aboard purposes;
e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;
f. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive;

(2) Solid waste facility, provided that:

a. The parcel of land is at least 40 upland acres;
b. All landfill activity occurs no closer than 150 feet to any property line and at least a class F buffer is provided within this setback;
c. No fill shall exceed 35 feet in height from the original grade of the property;
d. Such operations fully comply with F.S. Section 403.702 et seq.;
e. A future reclamation plan for the landfill site is presented;
f. The incinerator is located so that its operations do not adversely affect surrounding properties;
g. Road access to the side from U.S. 1 is limited to traffic serving the landfill; and
h. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the

provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

Sec. 130-97. Urban Commercial District (UC).

(a) The following uses are permitted as of right in the urban commercial district:

(1) Commercial retail of low- and medium-intensity, office uses, or restaurant uses, or any combination thereof of less than 5,000 square feet of floor area;
(2) Commercial retail uses, or restaurant uses, or any combination thereof of high intensity of less than 2,500 square feet of floor area;
(3) Institutional residential uses involving less than 20 dwelling units or rooms;
(4) Commercial apartments involving less than six dwelling units;
(5) Attached and detached dwellings involving less than six units, designated as employee housing;
(6) Commercial recreation uses limited to:

a. Bowling alleys;
b. Tennis and racquet ball courts;
c. Miniature golf and driving ranges;
d. Theaters;
e. Health clubs; and
f. Swimming pools;

(7) Institutional uses;
(8) Public buildings and uses;
(9) Accessory uses;
(10) Vacation rental use of nonconforming detached and attached dwelling units if a special vacation rental permit is obtained under the regulations established in section 134-1;
(11) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(12) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(13) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(14) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(15) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

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

(1) Commercial retail of low- and medium-intensity, office uses, or restaurant uses, or any combination thereof of greater than 5,000 but less than 20,000 square feet of floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail uses, or restaurant uses, or any combination thereof of high intensity of greater than 2,500 but less than 10,000 square feet of floor area, provided that access to U.S. 1 is by way of:

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

(3) Institutional residential uses involving 20 or more dwelling units or rooms, provided that:

a. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(4) Commercial apartments involving six to 18 dwelling units, provided that:

a. The hours of operation of the commercial uses are compatible with residential uses;
b. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

c. Tourist housing uses, including vacation rental use, of commercial apartments is prohibited;

(5) Attached and detached dwellings involving six (6) to 18 dwelling units, designated as employee housing;

(6) Hotels of fewer than 50 rooms provided that:

a. One or more of the following amenities are available to guests:

1. Swimming pools; or
2. Marina; or
3. Tennis courts; and

b. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(7) Parks; and

(8) Commercial recreation uses (indoor and outdoor), excluding amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. All outside lighting is designed and located so that light does not shine directly on any established residential use;

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

(1) Commercial retail of low- and medium-intensity, office uses, or restaurant uses, or any combination thereof, of greater than 20,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail uses, or restaurant uses, or any combination thereof of high intensity of greater than 10,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(3) Hotels providing 50 or more rooms, provided that:

a. The hotel has restaurant facilities on the premises;
b. One or more of the following amenities are available to guests:

1. Swimming pool; or
2. Docking facilities; or
3. Tennis courts; and

c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(4) Marinas, provided that:

a. The parcel proposed for development has access to water of at least four feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height;
d. Any commercial fishing activities are limited to the landing of catch, mooring and docking of boats and storage of traps and other fishing equipment; and
e. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;

(5) Commercial recreation uses including amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land has an area of at least two acres;
b. The parcel is separated from residential districts IS, SR, SR-L, SS, UR, URM, URM-L or established residential uses by at least a class E buffer; and
c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(6) Heliports or seaplane ports, provided that:

a. The heliport is associated with a governmental service facility, a law enforcement element or a medical services facility;

b. The heliport or seaplane port is a Federal Aviation Administration certified landing facility;
c. The landing and departure approaches do not pass over established residential uses or known bird rookeries;
d. If there are established residential uses within 500 feet of the parcel proposed for development, the hours of operation for non-emergency aircraft shall be limited to daylight; and
e. The use is fenced or otherwise secured from entry by unauthorized persons;

(7) Attached and detached dwellings involving more than 18 dwelling units, designated as employee housing; and

(8) New antenna-supporting structures, pursuant to section 146-5(a).

Sec. 130-98. Urban Residential District (UR).

(a) The following uses are permitted as of right in the urban residential district:

(1) Detached dwellings;
(2) Public buildings and uses;
(3) Home occupations—Special use permit required;
(4) Accessory uses;
(5) Vacation rental use if a special vacation rental permit is obtained under the regulations established in section 134-1;
(6) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(7) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(8) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(9) Wastewater nutrient reduction cluster systems that serve less than ten residences.

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

(1) Attached dwelling units, provided that:

a. Sufficient common areas for recreation are provided to serve the number of dwelling units proposed to be developed;
b. All entryways are designed and lighted to allow safe and secure access to all structures from walks and parking areas; and
c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or

3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(2) Institutional uses, provided that access to U.S. 1 is by way of:

a. An existing curb cut;
b. A signalized intersection; or

c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(3) Institutional residential uses;
(4) Parks;
(5) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(6) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e);
(7) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

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

(1) Marinas, provided that:

a. The parcel provided for development has access to water at least four feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height;
d. Vessels docked or stored shall not be used for live-aboard purposes; and
e. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback of ten feet;

(d) The following lawfully established nonresidential uses in the Urban Residential land use district, which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs, Section 9-203) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III.

(1) Marinas;

a. The parcel has continuous access to water of depths of at least four (4) feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing products;
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;
d. Vessels docked or stored shall not be used for live-aboard purposes; and
e. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

Sec. 130-99. Urban Residential—Mobile Home District (URM).

(a) The following uses are permitted, as of right in the urban residential-mobile home district:

(1) Mobile homes;
(2) Detached dwellings;
(3) Recreational vehicles in a registered RV park or park trailers commonly known as ‘park models’ as defined in F.S. 320.01.;
(4) Home occupations—Special use permit required;
(5) Accessory uses;
(6) Tourist housing uses, including vacation rental uses, are prohibited except in gated communities that have:

a. Controlled access; and
b. A homeowner's or property owner's association that expressly regulates or manages vacation rental uses;

(7) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(8) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(9) Wastewater nutrient reduction cluster systems that serve less than ten residences.

(b) The following are permitted as minor conditional uses in the urban residential—mobile home district (URM), subject to the standards and procedures set forth in chapter 110, article III:

(1) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(2) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(3) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

(c) The following uses are permitted as major conditional uses in the urban residential—mobile home district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Parks.

(d) The following lawfully established nonresidential uses in the Urban Residential—Mobile Home land use district, which were rendered nonconforming by the 2010 Comprehensive Plan, but listed as permitted uses in the land development regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDR's, Section 9-204) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in chapter 110, article III:

(1) Marinas, provided that:

a. The parcel has continuous access to water of depths of at least four (4) feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing products;
c. Vessels docked or stored shall not be used for live-aboard purposes;
d. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and
e. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive;

(2) Commercial retail, office, or any combination thereof, of low and medium intensity, and of less than 2,500 square feet of floor area, provided that:

a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;
b. The commercial retail use does not involve the sale of petroleum products;
c. The commercial retail use does not involve the outside storage or display of goods or merchandise with the exception that outside sales and display for nurseries may be permitted with the stipulation that required open space and required bufferyards may not be used for display and sales;
d. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C bufferyard;
e. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C bufferyard;
f. No signage other than one identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the

commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1; and

g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996, or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive.

Sec. 130-100. Urban Residential Mobile Home—limited district (URM-L).

(a) The following uses are permitted as of right in the Urban Residential Mobile Home-Limited district:

(1) Mobile homes;
(2) Recreational vehicles in a registered RV park or park trailers commonly known as ‘park models’ as defined in F.S. 320.01.;
(3) Home occupations—Special use permit required;
(4) Accessory uses;
(5) Tourist housing uses, including vacation rental uses, are prohibited except in gated communities that have:

a. Controlled access; and
b. A homeowner's or property owner's association that expressly regulates or manages vacation rental uses;

(6) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(7) Satellite earth stations less than two meters in diameter, as accessory uses, pursuant to section 146-5(f); and
(8) Wastewater nutrient reduction cluster systems that serve less than ten residences.

(b) The following uses are permitted as minor conditional uses in the urban Residential mobile home—limited district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(2) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(3) Satellite earth stations greater than or equal to two meters in diameter, as accessory uses, pursuant to section 146-5(f).

Sec. 130-101 Preservation District (P).

(a) There are no permitted uses, including passive or active recreational activities, in the Preservation district.

(b) Perimeter fencing is permitted conditioned on minimal clearing to construct the fence, and only where the fencing abuts developed land and contributes to the protection of the preservation area.

Sec. 130-102. Commercial 1 District (Cl).

(a) The following uses are permitted as of right in the Commercial 1 district:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of less than 2,500 square feet of floor area;
(2) Commercial recreation uses, limited to:

a. Bowling alleys;
b. Tennis and racquet ball courts;
c. Miniature golf and driving ranges;
d. Theaters;
e. Health clubs; and
f. Swimming pools;

(3) Institutional uses (excluding institutional residential uses or any form of dwelling unit);
(4) Public buildings and uses;
(5) Accessory uses;
(6) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(7) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(8) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(9) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e);
(10) Satellite earth stations, as accessory uses, pursuant to section 146-5(f);

(b) The following uses are permitted as minor conditional uses in the Commercial 1 district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 2,500 but less than 10,000 square feet of floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and of less than 2,500 square feet in floor area; provided that access to U.S. 1 is by way of:

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

(3) Parks;
(4) Light industrial uses, provided that:

a. The parcel proposed for development does not have an area of greater than two acres;
b. The parcel proposed for development is separated from any established residential use by at least a class C bufferyard; and
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height; and

(5) Commercial recreation uses (indoor and outdoor), excluding amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. All outside lighting is designed and located so that light does not shine directly on any established residential use.

(c) The following uses are permitted as major conditional uses in the Commercial 1 district subject to the standards and procedures set forth in chapter 110, article III:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 10,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and of greater than 2,500 square feet in floor area, provided that access to U.S. 1 is by way of:

a. An existing curb cut;

b. A signalized intersection; or
c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet; and

(3) New antenna-supporting structures, pursuant to section 146-5(a).

Sec. 130-103. Commercial 2 District (C2).

(a) The following uses are permitted as of right in the Commercial 2 district:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of less than 10,000 square feet of floor area;
(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and of less than 5,000 square feet of floor area;
(3) Commercial recreation uses, limited to:

a. Bowling alleys;
b. Tennis and racquet ball courts;
c. Miniature golf and driving ranges;
d. Theaters;
e. Health clubs; and
f. Swimming pools;

(4) Institutional uses (excluding institutional residential uses or any form of dwelling unit);
(5) Public buildings and uses;
(6) Accessory uses;
(7) Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
(8) Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
(9) Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
(10) Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
(11) Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

(b) The following uses are permitted as minor conditional uses in the Commercial 2 district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Commercial retail, office, restaurant uses, or any combination thereof, of low and medium intensity, and of greater than 10,000 but less than 45,000 square feet of floor area, provided that access to U.S. 1 is by way of:

a. An existing curb cut;
b. A signalized intersection; or

c. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and of greater than 5,000 but less than 30,000 square feet of floor area, provided that access to U.S. 1 is by way of:

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

(3) Parks;

(4) Light industrial uses, provided that:

a. The parcel proposed for development does not have an area of greater than two acres;
b. The parcel proposed for development is separated from any established residential use by at least a class C bufferyard; and
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height; and

(5) Commercial recreation uses (indoor and outdoor), excluding amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land proposed for development does not exceed five acres;
b. The parcel proposed for development is separated from any established residential use by a class C bufferyard; and
c. All outside lighting is designed and located so that light does not shine directly on any established residential use.

(c) The following uses are permitted as major conditional uses in the Commercial 2 district, subject to the standards and procedures set forth in chapter 110, article III:

(1) Commercial retail, office, restaurant use, or any combination thereof, of low and medium intensity, and of greater than 45,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(2) Commercial retail, restaurant uses, or any combination thereof, of high intensity, and of greater than 30,000 square feet in floor area, provided that access to U.S. 1 is by way of:

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

(3) Commercial recreation uses, including amusement or sea life parks and drive-in theaters, provided that:

a. The parcel of land has an area of at least two acres;
b. The parcel is separated from residential districts IS, SR, SR-L, SS, UR, URM, URM-L or established residential uses by at least a class E buffer; and
c. Access to U.S. 1 is by way of:

1. An existing curb cut;
2. A signalized intersection; or
3. A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least 400 feet;

(4) Marinas, provided that:

a. The parcel proposed for development has access to water of at least four feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving and sport fishing products;
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six feet in height;
d. Any commercial fishing activities are limited to the landing of catch, mooring and docking of boats and storage of traps and other fishing equipment; and
e. Each nonwaterside perimeter setback of the parcel proposed for development must have a class C bufferyard within a side yard setback often feet;

(5) Heliports or seaplane ports, provided that:

a. The heliport is associated with a governmental service facility, a law enforcement element or a medical services facility;
b. The heliport or seaplane port is a Federal Aviation Administration certified landing facility;
c. The landing and departure approaches do not pass over established residential uses or known bird rookeries;

d. If there are established residential uses within 500 feet of the parcel proposed for development, the hours of operation for non-emergency aircraft shall be limited to daylight; and

e. The use is fenced or otherwise secured from entry by unauthorized persons; and

(6) New antenna-supporting structures, pursuant to section 146-5(a).

Secs. 130-104—130-119. Reserved.

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ARTICLE IV. OVERLAY DISTRICTS

Sec. 130-120. Agricultural/aquacultural use overlay (A).

The Agricultural/Aquacultural Use zoning overlay district provides classifications of property for existing or future agricultural/ aquacultural uses. Property identified on the Monroe County Future Land Use Map with a designation of "A" may have any land use district as its designated zoning category. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district with the exception of those regulations controlling density and intensity. The use within the overlay district shall be developed with the following density and intensity regulations:

Residential		**Nonresidential**
Allocated Density (Per Upland Acre)	**Maximum Net Density (Per Buildable Acre)**	**Maximum Intensity (Floor Area Ratio)**
0 du 0 rooms/spaces	N/A N/A	0.25

Sec. 130-121. Military airports overlay (MA).

The Military Airports zoning overlay district provides classifications of property for existing or future military airports and regulates uses around, adjacent to, and in the approach zones of military airports in order to establish the control of obstructions and construction of structures affecting navigable airspace in accordance with criteria delineated in volume XI, part 77 in Federal Aviation Regulations, Florida Department of Transportation regulations, and this chapter.

Sec. 130-122. Coastal barrier resources system overlay district (CBRS).

(a) *Federal purpose.* The purpose of the federal Coastal Barrier Resources Act (CBRA) is to discourage further development in certain undeveloped portions of coastal barriers and remove the federal incentive to develop these areas. The federal law limits new federal expenditures and financial assistance, including flood insurance. These federal public expenditure limitations have the effect of discouraging development in areas the U.S. Department of the Interior designates as coastal barriers within the Coastal Barrier Resources System (CBRS). The CBRS protects coastal areas that serve as barriers against wind and tidal forces caused by coastal storms, and serve as habitat for aquatic species.

(b) *County purpose.* The county includes the federal CBRS system units, excluding OPAs, located within unincorporated Monroe County, except for the improved port property along the safe harbor entrance channel within system unit FL-57, as an overlay district. The purpose of the County's Coastal Barrier Resources System overlay district is to implement

the policies of the Comprehensive Plan by discouraging the extension and expansion of specific types of public facilities, including potable water, and/or electric services and/or telephone services to undeveloped lands designated as a system unit of the CBRS.

(c) *Application.* The Coastal Barrier Resources System overlay district shall be overlaid on all areas, except for the improved port property along the safe harbor entrance channel within system unit FL-57, within federally designated boundaries of a CBRS system unit on current (February 18, 2005) 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 facilities, including potable water, and/or electric services and/or telephone services shall be discouraged from extension or expansion to undeveloped CBRS units: potable water, electricity, and telephone. The maintenance, restoration, replacement and upgrading of existing public facilities, including potable water, and/or electric services and/or telephone services is not discouraged. The County may allow extension or expansion of these facilities and services if consistent with Comprehensive Plan Policy 101.12.2. This discouragement shall not apply to wastewater nutrient reduction cluster systems or central wastewater treatment collection systems, water distribution and sewer collection lines, pump/vacuum/lift stations, cluster systems, or small package plants/treatment facilities, which are encouraged.

For vacant property within the CBRS overlay district, it is presumed that non-CBRS lands are available for development and that development within CBRS system units can be avoided. This presumption may be rebutted only if the owner(s) of the vacant CBRS property obtains approval through the county's ROGO/NROGO/Tier system.

(d) *County public improvements.* Except for wastewater systems, within undeveloped areas of the CBRS overlay district, County public tax dollars and/or county financial assistance should not be used for new public facilities, including potable water, and/or electric services and/or telephone services, unless an analysis is conducted pursuant to Policy 101.12.2, and: 216.4.2

(1) Based on the analysis, the BOCC makes a specific finding that such new improvements are to protect the public health, safety and welfare, no reasonable alternatives exist to the proposed location, and the proposed location is approved by a supermajority of the BOCC; and/or
(2) Such new improvements and/or financial assistance are consistent with the federal exceptions pursuant to section 6 of the CBRA.

Sec. 130-123. Educational use overlay (E).

The Educational Use zoning overlay district provides classifications of property for public educational facilities. Property identified on the Monroe County Future Land Use Map with a designation of "E" may have any land use district as its designated zoning category. The use within the overlay district shall be subject to all land development regulations of the underlying

zoning district with the exception of those regulations controlling density and intensity. The use within the overlay district shall be developed with the following density and intensity regulations:

Residential		Nonresidential
Allocated Density (Per Upland Acre)	**Maximum Net Density (Per Buildable Acre)**	**Maximum Intensity (Floor Area Ratio)**
0 du 0 rooms/spaces	N/A N/A	0.30

Sec. 130-124. Correctional Facility overlay (CF).

The purpose of the Correctional Facility zoning overlay district is to identify compatible areas for the development of facilities for detention, confinement, treatment or rehabilitation of persons arrested or convicted for the violation of civil or criminal law. Maximum permitted densities and intensities shall be in accordance with the underlying land use (zoning) district.

Sec. 130-125. Institutional use overlay (INS).

The Institutional Use zoning overlay district provides classifications of property for institutional uses by federally tax-exempt, non-profit facilities, including, but not limited to, educational, scientific, religious, social service, cultural, health care, and recreational organizations. Property identified on the Monroe County Future Land Use Map with a designation of "INS" may have any land use district as its designated zoning category. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district with the exception of those regulations controlling density and intensity. The use within the overlay district shall be developed with the following density and intensity regulations:

Residential		Nonresidential
Allocated Density (Per Upland Acre)	**Maximum Net Density (Per Buildable Acre)**	**Maximum Intensity (Floor Area Ratio)**
0 du 3—15 rooms/spaces	N/A 6—24 rooms/spaces	0.30

Sec. 130-126. Public Buildings/Lands use overlay (PB).

The Public Buildings/Lands Use zoning overlay district provides classifications of property for public buildings and grounds owned by federal, state and local governments which serve the population of the County. In order to serve the health care needs of the community, federally tax-

exempt, non-profit institutional uses, limited to hospitals and their ancillary facilities, may also be permitted within the PB overlay district. Property identified in the Monroe County Comprehensive Plan as Public Buildings/Lands (PB) and identified on the Monroe County Future Land Use Map with a designation of "PB" may have any land use district as its designated zoning category. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district with the exception of those regulations controlling density and intensity. The use within the overlay district shall be developed with the following density and intensity regulations:

Residential		**Nonresidential**
Allocated Density (Per Upland Acre)	**Maximum Net Density (Per Buildable Acre)**	**Maximum Intensity (Floor Area Ratio)**
0 du 0 rooms/spaces	N/A N/A	0.30

Sec. 130-127. Public Facilities use overlay (PF).

The Public Facilities Use zoning overlay district provides classifications of property owned by public and private utilities and service providers. In order to serve the health care needs of the community, federally tax-exempt, non-profit institutional uses, limited to hospitals and their ancillary facilities, may also be permitted within the PF overlay district. Property identified in the Monroe County Comprehensive Plan as Public Facilities (PF) and identified on the Monroe County Future Land Use Map with a designation of "PF" may have any land use district as its designated zoning category. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district with the exception of those regulations controlling density and intensity. The use within the overlay district shall be developed with the following density and intensity regulations:

Residential		**Nonresidential**
Allocated Density (Per Upland Acre)	**Maximum Net Density (Per Buildable Acre)**	**Maximum Intensity (Floor Area Ratio)**
0 du 0 rooms/spaces	N/A N/A	0.30

Sec. 130-128. Tavernier Creek to Mile Marker 97 U.S. Highway 1 corridor district overlay (TC).

(a) Purpose. The purpose of the Tavernier Creek to Mile Marker 97 U.S. Highway 1 corridor district overlay is to implement the policies of the Comprehensive Plan and Tavernier

Creek to Mile Marker 97 Livable CommuniKeys Master Plan by protection of existing resources and enhancement of future development.

(b) Application. The Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines are hereby adopted by reference and declared a part of this chapter. Within the overlay district, as designated on the Tavernier Creek to Mile Marker 97 U.S. Highway 1 District Overlay Map, uses permitted as of right and uses requiring a minor or major conditional use permit shall be reviewed based upon the Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines and approved if found in compliance with these standards and guidelines.

(c) Amendment. The Tavernier Creek to Mile Marker 97 U.S. Highway 1 Corridor Development Standards and Guidelines may be amended by resolution of the BOCC upon recommendation of the Planning Commission and the director of planning.

Sec. 130-129. Tavernier historic district overlay (TH).

(a) Purpose. The purpose of the Tavernier historic district overlay is to implement the policies of the Comprehensive Plan and Tavernier Creek to Mile Marker 97 Livable CommuniKeys Master Plan to protect the historic resources of the community and to encourage development that is sensitive and compatible with the historic character of the Tavernier historic district as identified through the Tavernier Creek to Mile Marker 97 Livable CommuniKeys Master Plan.

(b) Application. The Tavernier Historic District Preservation Guidelines are hereby adopted by reference and declared part of this chapter. Within the overlay district, the county historic preservation commission shall review new development, remodeling or redevelopment of uses permitted as of right and uses requiring a minor or major conditional use permit, based on the Tavernier Historic District Preservation Guidelines.

(c) Amendment. The Tavernier Historic District Preservation Guidelines may be amended by resolution of the BOCC upon recommendation of the Planning Commission and the Planning Director.

Sec. 130-130. Tier overlay district.

(a) Purpose. The purpose of the tier overlay district is to designate geographical areas outside of the mainland of the county, excluding the Ocean Reef planned development, into tiers to assign ROGO and NROGO points, determine the amount of clearing of upland native vegetation that may be permitted, and prioritize lands for public acquisition. The tier boundaries are to be depicted on the tier overlay district map. Lands on Big Pine Key and No Name Key shall be delineated as tier I, II, or III. Lands in the remainder of the unincorporated county, excluding the Ocean Reef planned development, shall be delineated as tier I, III, and III-A (special protection area).

(b) Tier boundaries. Tier boundaries shall follow property lines wherever possible, except where a parcel line or distinct geographical feature, such as a canal or roadway, may be more appropriate.

(c) Tier boundary criteria, excluding Big Pine Key and No Name Key. The tier boundaries are designated using aerial photography, data from the Florida Keys Carrying Capacity Study, the endangered species maps, property and permitting information and field evaluation. The following criteria, at a minimum, are used to evaluate upland habitats and designate boundaries between different tier overlays:

(1) Tier I boundaries shall be delineated to include one or more of the following criteria and shall be designated tier I:

a. Vacant lands which can be restored to connect upland native habitat patches and reduce further fragmentation of upland native habitat.
b. Lands required to provide an undeveloped buffer, up to 500 feet in depth, if indicated as appropriate by special species studies, between natural areas and development to reduce secondary impacts. Canals or roadways, depending on width, may form a boundary that removes the need for the buffer or reduces its depth.
c. Lands designated for acquisition by public agencies for conservation and natural resource protection.
d. Known locations of threatened and endangered species, as defined in section 101-1, identified on the threatened and endangered plant and animal maps or the Florida Keys Carrying Capacity Study maps, or identified in on-site surveys.
e. Conservation, native area, sparsely settled, and offshore island land use districts.
f. Areas with minimal existing development and infrastructure.

(2) Lands located outside of Big Pine Key and No Name Key that are not designated tier I shall be designated tier III.

a. The following conditions shall constitute a break in pinelands or tropical hardwood hammock for calculating the one-acre minimum patch size for designation of tier III-A boundaries:

1. U.S. Highway 1, canals and open water;
2. Any disturbed pinelands or tropical hardwood hammock with invasive coverage of 40 percent or more;
3. Property lines of developed lots or vacant lots with a ROGO allocation award or an issued building permit, as of September 28, 2005, located within a Land Use District that allows only one unit per lot; or
4. Property lines of developed parcels of less than 10,000 square feet in area with a ROGO/NROGO allocation award or issued building permit, as of September 28, 2005, located within a Land Use District that allows residential development of more than one dwelling unit per parcel/lot or non-residential development.

b. Lots designated tier III-A (Special Protection Areas) on the November 29, 2005 maps may petition the county for a rezoning to tier III if the lot meets one of the following criteria:

1. The lot will be served by a central sewer and the wastewater collection system has an approved permit that was effective March 21, 2006 to construct the system on file from the Department of Environmental Protection; or

   Such lots may be granted a score of 30 points through an administrative determination made by the county biologist, the Director of Growth Management and rendered to the State Land Planning Agency until such time as the county sponsors a zoning map change to update the Tier Three Overlay Zoning Map and it is approved by the department of community affairs.

c. Any hammock identified in the county's data base and aerial surveys as 1.00 to 1.09 acres in area shall be verified by survey prior to its designation as tier III-A. A hammock that is deemed by survey and a field review by county biologists to fail the minimum size criteria shall have the Special Protection Area designation removed from the subject parcel.

(d) Big Pine Key and No Name Key tier boundary criteria. The tier boundaries shall be designated using the Big Pine Key and No Name Key Habitat Conservation Plan (2005) and the adopted community master plan for Big Pine Key and No Name Key.

(e) Tier overlay district map amendments. The tier overlay district map may be amended to reflect existing conditions in an area if warranted because of drafting or data errors or regrowth of hammock. However, the clearing of tropical hardwood hammock or pinelands that results in the reduction of the area of an upland native habitat patch to less than the one-acre minimum shall not constitute sufficient grounds for amending the designation of a tier III-A area to tier III. The tier overlay district map amendments shall be made pursuant to the procedures for map amendments to this chapter. Unlawful conditions shall not be recognized when determining existing conditions and regulatory requirements.

(f) Request for tier I designation. Notwithstanding the provisions of section 102-158(d)(2), an applicant may submit an application to the Planning and Environmental Resources Department containing substantial and competent documentation that an area meets the tier I criteria. Applications must be received by July 1 of each year on a form approved by the Planning Director for consideration by the special magistrate at a public hearing advertised at least 15 days prior to the hearing date. Said hearing by the special magistrate shall be held prior to November 1 of each year. The Planning Director will review the documentation and any other appropriate scientific information and prepare an analysis report for the special magistrate. The special magistrate will render a written opinion to the Planning Commission and BOCC either that the application meets the criteria for designating the lands as tier I or that the documentation is insufficient to warrant a map

amendment. The posting, advertising and review will follow the procedures in section 102-158(d)(5), (d)(6) and (d)(7).

Sec. 130-131. Rockland Key Commercial Retail Center Overlay District.

(a) *Purpose and intent.* The purposes of the Rockland Key Commercial Retail Center Overlay District is to implement applicable goals, objectives, and policies of the Comprehensive Plan and to allow larger-scale commercial retail development in a non-environmentally sensitive area of the Lower Keys that primarily serves the needs of permanent residents of the Lower Keys. The intent is to protect and maintain the character of the residential areas in the Lower Keys by allowing larger-scale commercial retail development within the overlay district, a scarified area that has historically been developed with nonresidential uses.

(b) *Boundary.* The Rockland Key Commercial Retail Center Overlay District shall be shown as an overlay district on the Official Land Use District Map.

(c) *Environmental protections.* Prior to the construction of any commercial retail development within the overlay district, in addition to the protections afforded in the comprehensive plan and this Land Development Code, all mangrove wetlands and associated transitional/upland buffer areas will be restored and preserved in accordance with established permit conditions. On-site wetland preservation and enhancement will include the following:

(1) Identified mangrove wetlands and associated transitional/upland buffer areas located on the property will be placed under a perpetual conservation easement to be recorded in the Public Records of Monroe County. The conservation areas within the conservation easement may in no way be altered from their permitted state (excluding restoration activities). Activities prohibited within the conservation areas include, but are not limited to:

a. Construction or placing of buildings, roads, signs, and/or other similar infrastructure on or above the ground;
b. Dumping or placing soil or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
c. Removal or destruction of trees, shrubs, or other vegetation, excluding vegetation classified as invasive exotic;
d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substances in such manner as to affect the surface;
e. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
f. Activities or development detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking or fencing;
g. Activities or development detrimental to such retention of land or water areas;

h. Activities or development detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; and

i. Any land use not related to preserving the natural state of the conservation area.

(2) A wetland restoration and preservation component that involves removal of fill material from wetlands, planting of the transitional buffer area with 100 percent native vegetation, removal of all invasive exotic vegetation, and fencing and signage at the limits of the conservation easement will be implemented in conformance with South Florida Water Management District ("SFWMD") permit requirements.

(3) A fully-compliant SFWMD-approved stormwater management system that prevents adverse impacts to the on-site wetland restoration and preservation/conservation area shall be implemented as part of any re-development process.

(d) Within the boundaries of the overlay district, the permitted uses in subsection (1) shall be enforced, in lieu of section 130-82, industrial district, and the maximum nonresidential land use intensities in subsection (2) shall be enforced, in lieu of section 130-164, maximum nonresidential land use intensities and district open space.

(1) *Permitted uses*. Rockland Key Commercial Retail Center Overlay District Permitted Uses

a. The following uses are permitted as of right in the overlay district:

1. Restaurants of 5,000 square feet or less of floor area;
2. Office uses of 5,000 square feet or less of floor area;
3. Commercial fishing;
4. Institutional uses;
5. Light industrial uses;
6. Public buildings and uses;
7. Accessory uses;
8. Replacement of an existing antenna-supporting structure pursuant to section 146-5(b);
9. Collocations on existing antenna-supporting structures, pursuant to section 146-5(c);
10. Attached wireless communications facilities, as accessory uses, pursuant to section 146-5(d);
11. Stealth wireless communications facilities, as accessory uses, pursuant to section 146-5(e); and
12. Satellite earth stations, as accessory uses, pursuant to section 146-5(f).

b. The following uses are permitted as minor conditional uses in the overlay district, subject to the standards and procedures set forth in chapter 110, article III:

1. Commercial retail uses of 10,000 square feet or less;
2. Restaurants of 5,001 to 20,000 square feet of floor area;
3. Office uses of 5,001 to 20,000 square feet of floor area; and
4. New antenna-supporting structures, pursuant to section 146-5(a).

c. The following uses are permitted as major conditional uses in the overlay district, subject to the standards and procedures set forth in chapter 110, article III:

1. Commercial retail uses of 10,001 square feet or greater.

As set forth in section 130-82, heavy industrial uses and commercial apartments are permitted uses in the industrial district. However, these uses are not permitted within the boundary of the overlay district. All existing, lawfully established heavy industrial uses and commercial apartments within the boundary of the overlay district shall be considered nonconforming uses upon adoption of the boundary and may continue in accordance with section 102-56. However, superseding any regulations set forth in section 102-56 to the contrary, upon issuance of a building permit for commercial retail use on a parcel, any heavy industrial use or commercial apartment on that parcel shall be terminated.

(2) *Maximum nonresidential land use intensities and district open space.* For the purposes of this overlay district, uses with corresponding density/ intensity thresholds shall be cumulative and utilize the floor area ratios as follows:

Rockland Key Commercial Retail Center Overlay District Maximum Nonresidential Land Use Intensities and District Open Space

Land Use	**Maximum Floor Area Ratio**	**O.S.R.**
Light Industrial	0.40	0.20
Public	0.40	0.20
Office	0.40	0.20
Institutional	0.40	0.20
Commercial Retail		
Low Intensity	0.45	0.20

Land Use	**Maximum Floor Area Ratio**	**O.S.R.**
Medium Intensity	0.40	0.20
High Intensity	0.35	0.20
Commercial Fishing	0.40	0.20

(3) *Maximum floor area adjacent to U.S. 1.* No building or structure shall exceed a maximum floor area of 50,000 square feet within 600 feet of the edge of the U.S. 1 right-of-way.

(4) *Maximum floor area.*

a. An individual building may contain up to 175,000 square feet of floor area only if the design of the building complies with the following design requirements:

1. *Building facades.* Facades equal to or greater than 100 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least 20 percent of the length of the facade. No uninterrupted length of any facade shall exceed 40 horizontal feet.
2. *Roofs.* All buildings, regardless of size, shall incorporate at least two of the following roof-related architectural features:

i. Overhanging eaves, extending no less than three feet past the supporting walls.
ii. Sloping roofs with an average slope greater than or equal to one foot of vertical rise for every three feet of horizontal run and less than or equal to one foot of vertical rise for every one foot of horizontal run.
iii. Three or more roof slope planes.
iv. A specific architectural element proposed by the applicant's architect that is acceptable to the planning director.

For any building with a flat roof and/or any building on which rooftop equipment is installed, parapets shall be incorporated to conceal the flat roof and rooftop equipment, such as HVAC units, from public view. The average height of such parapets shall not exceed 15 percent of the height of the supporting wall and such parapets shall not at any point exceed one-third of the height of the supporting wall. Such parapets shall feature three-dimensional cornice treatment.

3. *Material and/or color variation.* A front building facade, regardless of the building's size, shall include at least two material types and at least two colors.
4. *Design consistency.* Compatible and consistent design, materials and colors shall be utilized for all new structures within the overlay district in order to make the development as a whole more cohesive.

b. No individual tenant space shall exceed 140,000 square feet.
c. The cumulative total of all commercial floor area within the overlay district shall not exceed a maximum floor area of 335,000 square feet.

(5) *Required public improvements.* Prior to submittal of any development application involving commercial retail use, the developer shall enter into a development agreement with the BOCC in accordance with the procedures set forth in section 110-132. The development agreement shall be contingent on:

a. The developer dedicating to the county (or the developer dedicating to the county for long term leasing for $1.00 per year) and constructing a public facility, consisting of a minimum amount of 5,000 square feet of total floor area, which includes the following features:

1. A 200-seat capacity community meeting room; and
2. Restroom and kitchen facilities; and
3. 1,000 square feet of area for neighborhood-oriented services that will be made available by the County to users (i.e. hobby rooms or computer rooms).

The public facility may be utilized for meetings of non-profit, for-profit, county, or community organizations, as well as other governmental and public entities, on a first-come first serve basis. Operational fees for the facility may be charged by the County. This facility must obtain a certificate of occupancy prior to, or concurrent with, issuance of a certificate of occupancy for a building to be utilized by any commercial retail use.

b. The developer constructing and making available for lease 10,000 sq. ft. of commercial retail floor area consisting of no fewer than four separate commercial units, each no larger than 2,500 sq. ft. for neighborhood-oriented retail and service uses such as, but not limited to animal/veterinary clinics, fitness centers, hair salons/barber shops, mail and shipping services, medical offices, professional services, or similar neighborhood-oriented uses deemed acceptable by the planning director on a first come basis.

c. The developer providing bicycle/pedestrian paths connecting the development to the county trail system along the US 1 corridor and a multi-modal transit stop for mass transit, which shall include designated areas for bicycle, scooter and motorcycle parking and an electric car charging system to limit vehicle trips.

The mass transit stop shall include a covered and secure area for passengers waiting for transportation.

d. The developer funding at least one City of Key West bus purchase for use on the Key West-Marathon route to provide better, more frequent public transit to alleviate traffic on U.S. 1 caused by commercial development.

(6) *Traffic impact statement.* Prior to any development approval including a minor or major conditional use, a traffic impact statement shall be required regardless of traffic generated by development.

(7) *Required U.S. 1 improvements.* Notwithstanding other provisions of the Land Development Code, if, during the conditional use permit approval process and after the traffic impact statement is complete, based on FDOT standards, improvements to U.S. 1 are warranted, the developer is responsible for the funding of designing, permitting, installing and constructing the required improvements related to the proposed development prior to the issuance of a building permit or prior to a certificate of occupancy if the applicant enters into a development agreement with the County which regulates the timing of the improvements to U.S. 1.

(8) *Sound attenuation.* Habitable structures, permitted under this overlay district, shall meet noise reduction levels for high noise zones. Measures to achieve a noise reduction level of 30dB must be incorporated into design and construction of the habitable structures. This shall be the minimum sound attenuation standard. The community meeting facility required in subsection (d)(5) shall not be constructed in the most current 75 DNL area.

(9) *Areas designated native area (NA).* The permitted uses provided in subsection (d)(1) shall not be permitted in any area designated as native area (NA) on the land use district map.

(10) *Affordable housing.* Prior to submittal of any development application involving commercial retail use the developer shall enter into a development agreement with the BOCC in accordance with the procedures set forth in section 110-133. The development agreement shall be contingent on a mutually agreeable affordable housing requirement.

(11) *Boundary buffers.* Prior to the issuance of a commercial retail use of greater than 10,000 square feet within the overlay district, the applicant shall install a class "D" bufferyard along the boundary of the overlay district adjacent to US 1 and class "C" bufferyards along all other non-shoreline boundaries of the overlay district.

(12) *Hurricane preparedness.* To further the goals of Monroe County to be prepared for hurricanes and to assist in the clean up afterwards, parking facilities in the overlay district shall be made available for use by Monroe County for the storage of official vehicles in advance of major storm events, if Monroe County deems such use necessary and is regulated by development agreement.

Sec. 130-132. Key Largo Tradewinds Community Center Overlay (TCC).

(a) Purpose. The purpose of the Tradewinds Community Center zoning overlay district is to identify a defined geographic development focal area according to the adopted Key Largo

Livable CommuniKeys Master Plan. The purpose of the Tradewinds Community Center is to retain and expand the mix of retail, public parks and affordable housing uses prevalent in this area for the encouragement of commerce, employment and recreational opportunities available at maximum convenience to the public.

(b) Application. The maximum permitted densities and intensities shall be in accordance with the underlying land use zoning district. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district, with the exception of following:

(1) Commercial retail high intensity uses that generate more than one hundred and fifty (150) trips per one thousand square feet of floor area shall be permitted.

(2) Outdoor storage and outdoor retail sales as a principal use shall be permitted.

Sec. 130-133. Key Largo Downtown Community Center Overlay (DTCC).

(a) Purpose. The purpose of this district is to identify a defined geographic development focal area according to the adopted Key Largo Livable CommuniKeys Master Plan. The purpose of the Downtown Key Largo Community Center is to retain and expand the mix of retail, tourist and public park uses prevalent in this area to encourage commerce, employment and recreational opportunities at maximum convenience to the public.

(b) Application. The maximum permitted densities and intensities shall be in accordance with the underlying land use zoning district. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district, with the exception of following:

(1) Outdoor storage and outdoor retail sales as a principal use shall not be permitted.
(2) Commercial retail high intensity uses that generate more than one hundred and fifty (150) trips per one thousand square feet of floor area shall not be allowed.

Sec. 130-134. Key Largo Welcome Center Community Center Overlay (WCCC).

(a) Purpose. The purpose of this district is to identify a defined geographic development focal area according to the adopted Key Largo Livable CommuniKeys Master Plan.

(b) Application. The maximum permitted densities and intensities shall be in accordance with the underlying land use zoning district. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district, with the exception of following:

(1) Commercial retail high intensity uses that generate more than one hundred and fifty (150) trips per one thousand square feet of floor area shall not be allowed.

(2) Outdoor storage and outdoor retail sales as a principal use shall not be allowed.

Sec. 130-135. Big Pine Key Commercial Community Center overlay (BPCCC).

(a) Purpose. The purpose of this district is to identify a defined geographic development focal area according to the adopted Master Plan for Future Development of Big Pine Key and No Name Key. The overlay shall encourage the concentration of new nonresidential floor area and be located at the intersection of U.S. 1 and Key Deer Boulevard, Wilder Road and Chapman Street.

(b) Application. The maximum permitted densities shall be in accordance with the underlying land use zoning district. The use within the overlay district shall be subject to all land development regulations of the underlying zoning district. The following regulations apply within this overlay:

(1) Small individual buildings of 2,500 square feet of floor area or less fronting both U.S. 1 and Key Deer Boulevard are encouraged, with commercial uses on the lower floor and employee housing on the upper floor.
(2) The maximum F.A,R. for nonresidential uses shall a be 0.40.
(3) Parking lots in front of nonresidential uses are discouraged, although on-street parking may occur where appropriate.
(4) Building front setbacks are reduced with the majority of the building facade on the required building line.
(5) Arcades, colonnades, open porches, canopies, awnings, balconies may be permitted to encroach on the frontage.
(6) NROGO allocation awards of floor area exceeding 2,500 square feet per site are permitted within the overlay.
(7) The transfer of nonresidential floor area from within the Big Pine and No Name Key subarea to the overlay is encouraged.

Sec. 130-136. Reserved for the Lower Sugarloaf Community Center overlay (LSCC).

Sec. 130-137. Reserved for the Cudjoe Community Center overlay (CCC).

Sec. 130-138. Reserved for the Summerland Community Center overlay (SCC).

Sec. 130-139. Reserved for the Ramrod Community Center overlay (RCC).

Sec. 130-140. Reserved for the Safe Harbor Community Center overlay (SHCC).

Secs. 130-141—130-155. Reserved.

ARTICLE V. LAND USE INTENSITIES

Sec. 130-156. Standards.

(a) No structure or land in the county shall hereafter be developed, used or occupied at an intensity or density greater than the standards set out in this article. No density shall be allocated for any land designated as mangroves on the existing conditions map.

(b) The density and intensity provisions set out in this section are intended to be applied cumulatively so that no development shall exceed the total density limits of this article. For example, if a development includes both residential and commercial development, the total gross amount of development shall not exceed the cumulated permitted intensity of the parcel proposed for development. If a proposed development is for a combination of nonresidential uses, the acreage required for each use shall be determined independently based on the floor area ratio in section 130-164 for each individual use such that no acreage shall be dedicated for more than one use.

Sec. 130-157. Maximum permanent residential density and minimum required open space.

The maximum permanent residential density for those uses permitted by this chapter and minimum required open space shall be in accordance with the following table:

Maximum Permanent Residential Density and Minimum Open Space			
Land Use District	**Allocated Density[(a)(b)]** DU/Gross Acre of Upland	**Maximum Net Density[(a)(b)(c)]** DU/Buildable Acre	**Minimum Open Space Ratio[(d)]**
Airport (AD)	0	N/A	0.20
Commercial 1 (C1)	0	N/A	0.20
Commercial 2 (C2)	0	N/A	0.20
Commercial Fishing Area (CFA)	3	12[(e)]	0.20
Commercial Fishing Special District (CFSD)	CFSD-20: 1[(f)] Other CFSDs: 3	CFSD-20: N/A Other CFSDs: 12[(e)]	0.20

Land Use District	Allocated Density[(a)(b)] DU/Gross Acre of Upland	Maximum Net Density[(a)(b)(c)] DU/Buildable Acre	Minimum Open Space Ratio[(d)]
Commercial Fishing Village (CFV)	1/lot	N/A	0.20
Conservation (CD)	0	N/A	0.90
Destination Resort (DR)	1.0	18.0[(e)]	0.20
Improved Subdivision (IS)	1/lot	0	0.20
Improved Subdivision – Duplex (IS-D)	2/lot	0	0.20
Industrial (I)	1.0	2.0	0.20
Mainland Native Area (MN)	0.01	N/A	0.99[(g)]
Maritime Industries (MI)[(h)]	1.0	2.0[(e)]	0.20
Military Facilities (MF)	6.0	12.0	0.20
Mixed Use (MU)	1.0	12.0[(e)]	0.20
Native Area (NA)	0.25	N/A	0.95[(d)]
Offshore Island (OS)	0.1	N/A	0.95
Park and Refuge (PR)	0	N/A	0.90
Preservation (P)	0	N/A	1.00
Recreational Vehicle (RV)	0[(i)]	N/A	0.20
Sparsely Settled Residential (SS)	0.5	N/A	0.80
Suburban Commercial (SC)	3.0	TDRs: 6.0[(e)] Affordable: 18.0[(e)]	0.20
Suburban Residential (SR)	0.5	5.0	0.50
Suburban Residential (Limited) (SR-L)	0.5	3.0	0.50
Urban Commercial (UC)	6.0	12.0[(e)]	0.20
Land Use District	**Allocated Density[(a)(b)]** DU/Gross Acre of Upland	**Maximum Net Density[(a)(b)(c)]** DU/Buildable Acre	**Minimum Open Space Ratio[(d)]**

Urban Residential (UR)	6.0	TDRs: 12.0 Affordable: 25.0	0.20
Urban Residential--Mobile Home (URM):	1/lot	N/A	0.20
Mobile Home Parks per Section 101-1	5.0	7.0	0.20
Urban Residential Mobile Home-Limited (URM-L)	1/lot	N/A	0.20

(a) The allocated densities for submerged lands, salt ponds, freshwater ponds, and mangroves shall be 0 and the maximum net density bonuses shall not be available.

(b) Vessels, including live-aboard vessels or associated wet slips, are not considered dwelling units and do not count when calculating density.

(c) Maximum Net Density is the maximum density allowable with the use of the TDRs, or for qualifying affordable housing development. TDRs can be utilized to attain the density between the allocated density standard up to the maximum net density standard. Deed restricted affordable dwelling units may be built up to the maximum net density without the use of TDRs. “N/A” means that maximum net density bonuses shall not be available. Buildable acres means the portion of a parcel of land that is developable and is not required open space.

(d) Additional open space requirements may apply based on environmental protection criteria - see additional open space ratios in Chapter 118. In accordance with section 101-2(1), the most restrictive of these ratios applies.

(e) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/ Commercial and Mixed Use/ Commercial Fishing future land use categories, the maximum net density bonuses shall not be available.

(f) Per Policy 101.5.25, the allocated density for the CFSD-20 land use district (Little Torch Key) shall be 1 dwelling unit per acre, or 1 dwelling unit per parcel for those parcels existing as of September 15, 1986, whichever is less, and the maximum net density bonuses shall not be available. Residential density shall be allowed in addition to the permitted nonresidential uses and intensity (i.e., density and intensity shall not be counted cumulatively).

(g) The minimum open space ratio for the MN zoning district is 0.99 for permanent residential uses. For campground and nonresidential uses within the MN zoning district, the minimum open space ratio is 0.95, as shown in the density and intensity tables in Sections 130-162 and 130-164.

(h) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6 of the Comprehensive Plan.

(i) (i) Per Section 130-92(a)(4), in the RV zoning district, commercial apartments shall be the only permanent residential use allowed, not to exceed 10% of total RV spaces allowed or in existence on the site, whichever is less.

Sec. 130-158. Reserved

Sec. 130-159. Reserved

Sec. 130-160. Transferable development rights (TDRs).

(a) *General and criteria.* The Maximum Net Density is the maximum density allowable with the use of TDRs, and shall not exceed the maximum densities established in the Comprehensive Plan. TDRs may be utilized to attain the density between the allocated density standard up to the maximum net density standard. All residential development rights allocated or established in sections 130-157 and 130-162 (allocated density for permanent residential dwelling units or transient units) are transferable from one parcel of land to another parcel of land, provided that the sender and receiver sites meet all of the following criteria:

(1) A sender site is the land area from which the development right(s) to be transferred is derived. In the event an applicant intends to only use part of a greater property for a transferable development right application, the additional land area not required to amass the transferable development right(s) shall not be considered part of the sender site and not subject to conservation as required in subsection (8). As part of the application required in subsection (b)(2), the applicant shall provide a boundary survey and legal description that identify the boundaries of the sender site within the greater property.

A sender site shall meet the following criteria:

a. Located in a Tier I, II, III-A or III designated area; including any tier within the County's Military Installation Area of Impact (MIAI) Overlay; and
b. Property has development rights to transfer.

(2) The maximum net densities set forth in sections 130-157 and 130-162 shall not be exceeded and new development on a receiver site shall be developed in compliance with each and every requirement of this Land Development Code.

(3) The maximum net densities set forth for the applicable future land use category in the Comprehensive Plan shall not be exceeded and new development on a receiver site shall be developed in compliance with each and every requirement of the Comprehensive Plan and the Land Development Code.

(4) A receiver site shall meet the following criteria:

a. The Future Land Use category and Land Use (Zoning) District must allow the requested use;
b. Must have an adopted maximum net density standard;
c. Includes all infrastructure (potable water, adequate wastewater treatment and disposal wastewater meeting adopted LOS, paved roads, etc.)
d. Located within a Tier III designated area; and

e. Is not located within a designated CBRS unit.

(5) The assignment of transferable development rights to receiver sites on Big Pine Key, No Name Key, and North Key Largo from other areas of the County shall be prohibited, excluding the assignments of transferable development rights a) from sender sites on Big Pine Key to receiver sites on Big Pine Key; b) from sender sites on No Name Key to receivers sites on No Name Key, c) from sender sites on No Name Key to Big Pine Key and d) from sender sites within North Key Largo to receiver sites within North Key Largo.

(6) The assignment of transferable development rights to receiver sites within Land Use (Zoning) Districts that do not have a maximum net densities is prohibited (including, but not limited to, Improved Subdivision (IS, IS-D, IS-M, or IS-V), Urban Residential Mobile Home (URM or URM-limited), Sparsely Settled (SS), Native Area (NA), Offshore Island (OS), and Mainland Native (MN).

(7) A development right may be transferred in part, provided it is rounded to the nearest tenth (i.e. if a sender site is designated Native Area (NA) and consists only of two acres of upland, the property owner may transfer the fractional 0.50 transferable development right). However, in accordance with subsection (8), in no event shall a property owner utilize part of a sender site's acreage for a transferable development right and maintain the right to develop that acreage as the land use intensity shall be exhausted.

(8) Prior to application for a building permit authorizing the development of a dwelling unit on a receiver site requiring a transferable development right, the sender site(s) shall be a) dedicated to the county or b) placed in a conservation easement prohibiting its future development. A conservation easement shall be reviewed and approved by the planning and environmental resources department prior to its recording in the official records of the county.

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

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

(2) The minor conditional use permit application required in subsection (b)(1) shall be submitted in a form provided by the Planning and Environmental Resources Department and include the following:

a. The names and addresses of the property owners of record for the sender site(s) and receiver site(s);
b. The property record cards from the Monroe County Property Appraiser of the sender site(s) and receiver site(s);
c. Written legal descriptions of the sender site(s) and receiver site(s);
d. A copy of the affidavit of intent to transfer;
e. Boundary surveys and legal descriptions of the sender site(s) and receiver site(s), prepared by a surveyor registered in the State of Florida, showing the boundaries of the sites, elevations, bodies of water and wetlands, total acreage, total upland acreage and total acreage by habitat;

(3) A development order shall memorialize approval of the minor conditional use permit required in subsection (b)(1). The development order shall include language requiring a Deed of Transfer described in this subsection (below). After successfully passing all applicable appeal periods, the development order shall be recorded in the official records of the Monroe County Clerk of the Circuit Court. Such recording shall be carried out so that the document is associated with all applicable sender and receiver sites; and

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

Sec. 130-161. Reserved.

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Sec. 130-162. Maximum Densities for Hotel/Motel, Campground, Recreational Vehicle, Seasonal and Institutional Residential Uses, and Minimum Open Space.

Maximum hotel/motel, campground, recreational vehicle, seasonal and institutional residential densities for those uses permitted by this chapter shall be in accordance with the following table:

Maximum Densities for Hotel/Motel, Campground, RV, Seasonal and Institutional Residential Uses and Minimum Open Space			
Land Use District and Use	**Allocated Density[(a)(b)]** Rooms or Spaces/Gross Acre of Upland	**Maximum Net Density[(a)(b)(c)]** Rooms or Spaces/Buildable Acre	**Minimum Open Space Ratio[(d)]**
Airport (AD)	0	N/A	0.20
Commercial 1 (C1)	0	N/A	0.20
Commercial 2 (C2)	0	N/A	0.20
Commercial Fishing Area (CFA)	0	N/A	0.20
Commercial Fishing Special District (CFSD)	0	N/A	0.20
Commercial Fishing Village (CFV)	0	N/A	0.20
Conservation (CD)	0	N/A	0.90
Destination Resort (DR)	10.0	25.0[(e)]	0.20
Improved Subdivision (IS)	0	N/A	0.20
Improved Subdivision – Duplex (IS-D)	0	N/A	0.20
Industrial (I)	0	N/A	0.20
Mainland Native Area (MN)	2.0[(f)]	N/A	0.95[(g)]
Maritime Industries (MI)[(h)]	10.0[(i)]	15.0[(e)(i)]	0.20
Military Facilities (MF)	10.0	20.0	0.20

Land Use District	**Allocated Density**[(a)(b)] DU/Gross Acre of Upland	**Maximum Net Density**[(a)(b)(c)] DU/Buildable Acre	**Minimum Open Space Ratio**[(d)]
Mixed Use (MU)			
Hotel	10.0	15.0[(e)]	0.20
Institutional Residential	5.0	20.0[(e)]	0.20
Campground	10.0	N/A	0.20
Native Area (NA)	0	N/A	0.95[(d)]
Offshore Island (OS)	0	N/A	0.95
Park and Refuge (PR)	2.0	N/A	0.90
Preservation (P)	0	N/A	1.00
Recreational Vehicle (RV)	15.0	15.0[(e)]	0.20
Sparsely Settled Residential (SS)	0	N/A	0.80
Suburban Commercial (SC)			
Hotel	10.0	15.0[(e)]	0.20
Institutional Residential	5.0	20.0[(e)]	0.20
Campground	10.0	N/A	0.20
Suburban Residential (SR)	0	N/A	0.50
Suburban Residential Limited) (SR-L)	0	N/A	0.50
Urban Commercial (UC)			
Hotel	10.0	19.0[(e)]	0.20
Institutional Residential	15.0	24.0[(e)]	0.20
Urban Residential (UR)	10.0	20.0	0.20

Land Use District	Allocated Density[(a)(b)] DU/Gross Acre of Upland	Maximum Net Density[(a)(b)(c)] DU/Buildable Acre	Minimum Open Space Ratio[(d)]
Urban Residential--Mobile Home (URM)	5.0	7.0	0.2
Urban Residential Mobile Home-Limited (URM-L)	5.0	7.0	0.2

(a) The allocated densities for submerged lands, salt ponds, freshwater ponds, and mangroves shall be 0 and the maximum net density bonuses shall not be available.

(b) Vessels, including live-aboard vessels or associated wet slips, are not considered dwelling units and do not count when calculating density.

(c) Maximum Net Density is the maximum density allowable with the use of the TDRs, or for qualifying affordable housing development. TDRs can be utilized to attain the density between the allocated density standard up to the maximum net density standard. Deed restricted affordable dwelling units may be built up to the maximum net density without the use of TDRs. "N/A" means that maximum net density bonuses shall not be available. Buildable acres means the portion of a parcel of land that is developable and is not required open space.

(d) Additional open space requirements may apply based on environmental protection criteria - see additional open space ratios in Chapter 118. In accordance with section 101-2(1), the most restrictive of these ratios applies.

(e) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/ Commercial and Mixed Use/ Commercial Fishing future land use categories, the maximum net density bonuses shall not be available.

(f) Within the Mainland Native Area land use district, campground spaces and nonresidential buildings shall only be permitted for educational, research or sanitary purposes.

(g) The minimum open space ratio for the MN zoning district is 0.95 for campground and nonresidential uses. For permanent residential uses within the MN zoning district, the minimum open space ratio is 0.99, as shown in the density table in Section 130-157.

(h) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6 of the Comprehensive Plan.

(i) For parcels designated as MI zoning that are within the I future land use category, the allocated density for hotel-motel, recreational vehicle and institutional residential uses shall be 0 and the maximum net density bonuses shall not be available.

Sec. 130-163. Existing residential dwelling units and transient units.

Notwithstanding the provisions of sections 130-157 and 130-162, the owners of land upon which a lawfully established dwelling unit, mobile home, or transient unit exists shall be entitled to one dwelling unit for each type of dwelling unit in existence before January 4, 1996. Such lawfully-established dwelling unit shall not be considered nonconforming as to density.

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

Maximum nonresidential land use intensities for those uses permitted by this chapter and minimum required open space shall be in accordance with the following table:

Maximum Nonresidential Land Use Intensity and Minimum Open Space		
Land Use District and Use	**Maximum Floor Area Ratio**	**Minimum Open Space Ratio[(a)]**
Airport (AD)	0.10	0.20
Commercial 1 (C1)		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Commercial 2 (C2)		
Low Intensity Commercial Retail or Restaurant	0.50	0.20
Medium Intensity Commercial Retail or Restaurant	0.40	0.20
High Intensity Commercial Retail or Restaurant	0.35	0.20
Office	0.45	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio[(a)]
Light Industrial	0.40	0.20
Institutional	0.40	0.20
Public Buildings/Uses	0.35	0.20
Commercial Recreation	0.25	0.20
Commercial Fishing Area (CFA)[(b)]	0.40	0.20
Commercial Fishing Special District (CFSD)[(b)(c)]		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.30	0.20
Heavy Industrial	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Fishing Village (CFV)[(b)]	0.40	0.20
Conservation (CD)	0.05	0.90
Destination Resort (DR)[(b)]		
Commercial uses associated/ required with a hotel	0.25	0.20
Marinas	0.25	0.20
Improved Subdivision (IS)	0	0.20
Improved Subdivision - Duplex (IS-D)	0	0.20
Industrial (I)		

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio[a]
Office	0.40	0.20
Restaurant	0.30	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.40	0.20
Heavy Industrial	0.25	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.40	0.20
Mainland Native Area (MN)	0.03[d]	0.95[e]
Maritime Industries (MI)[b][f]		
Low Intensity Commercial Retail or Restaurant	0.40	0.20
Medium Intensity Commercial Retail or Restaurant	0.30	0.20
High Intensity Commercial Retail or Restaurant	0.30	0.20
Office	0.50	0.20
Commercial Fishing	0.45	0.20
Light Industrial	0.35	0.20
Heavy Industrial	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.60	0.20
Agriculture (Mariculture)	0.45	0.20
Military Facilities (MF)		
Military Uses	0.50	0.20
Low Intensity Commercial Retail or Restaurant	0.30	0.20
Medium Intensity Commercial Retail or Restaurant	0.30	0.20
High Intensity Commercial Retail or Restaurant	0.30	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio[a]
Office	0.40	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Airport Uses	0.50	0.20
Mixed Use (MU)[b]		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Commercial Fishing	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Native Area (NA)		
Public Buildings/Uses	0.20	0.95
Agriculture	0.20	0.95
Offshore Island (OS)	0	0.95
Park and Refuge (PR)	0.20	0.90
Preservation (P)	0	1.00
Recreational Vehicle (RV)[b]		
Commercial Retail or Restaurant	<2,500SF (per 130-92)	0.20
Marina	0.25	0.20

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio[a]
Sparsely Settled Residential (SS)		
Public Buildings/Uses	0.20	0.80
Agriculture	0.20	0.80
Suburban Commercial (SC)[b]		
Low Intensity Commercial Retail or Restaurant	0.35	0.20
Medium Intensity Commercial Retail or Restaurant	0.25	0.20
High Intensity Commercial Retail or Restaurant	0.15	0.20
Office	0.40	0.20
Light Industrial	0.30	0.20
Institutional	0.30	0.20
Public Buildings/Uses	0.30	0.20
Commercial Recreation	0.25	0.20
Suburban Residential (SR)		
Low Intensity Commercial Retail or Restaurant	<2,500SF (per 130-94)	0.50
Medium Intensity Commercial Retail or Restaurant	<2,500SF (per 130-94)	0.50
Office	<2,500SF (per 130-94)	0.50
Institutional	0.25	0.50
Public Buildings/Uses	0.25	0.50
Commercial Recreation	0.25	0.50
Agriculture	0.25	0.50
Suburban Residential–Limited (SR-L)	0	0.50

Land Use District and Use	Maximum Floor Area Ratio	Minimum Open Space Ratio[a]
Urban Commercial (UC)[b]		
Low Intensity Commercial Retail or Restaurant	0.45	0.20
Medium Intensity Commercial Retail or Restaurant	0.40	0.20
High Intensity Commercial Retail or Restaurant	0.35	0.20
Office	0.45	0.20
Institutional	0.40	0.20
Public Buildings/Uses	0.35	0.20
Commercial Recreation	0.40	0.20
Urban Residential (UR)	0	0.20
Urban Residential–Mobile Home (URM)	0	0.20
Urban Residential Mobile Home–Limited (URM-L)	0	0.20

(a) Additional open space requirements may apply based on environmental protection criteria - see additional open space ratios in Chapter 118. In accordance with section 101-2(1), the most restrictive of these ratios applies.

(b) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/ Commercial and Mixed Use/ Commercial Fishing future land use categories, the maximum floor area ratio shall be 0.10.

(c) Per Policy 101.5.25, within the CFSD-20 land use district (Little Torch Key), residential density shall be allowed in addition to the permitted nonresidential uses and intensity (i.e., density and intensity shall not be counted cumulatively).

(d) Within the Mainland Native Area land use district, campground spaces and nonresidential buildings shall only be permitted for educational, research or sanitary purposes.

(e) The minimum open space ratio for the MN zoning district is 0.95 for campground and nonresidential uses. For permanent residential uses within the MN zoning district, the minimum open space ratio is 0.99, as shown in the density table in Section 130-157.

(f) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6 of the Comprehensive Plan.

Sec. 130-165. Aggregation of development.

Any development that has or is a part of a common plan or theme of development or use, including, but not limited to, an overall plan of development, common or shared amenities, utilities or facilities, shall be aggregated for the purpose of determining permitted or authorized development and compliance with each and every standard of this Land Development Code (includes clearing limits) and for the purpose of determining the appropriate form of development review. *(ORD 030-2016)*

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Chapter 131 BULK REGULATIONS

Sec. 131-1. Required Setbacks.

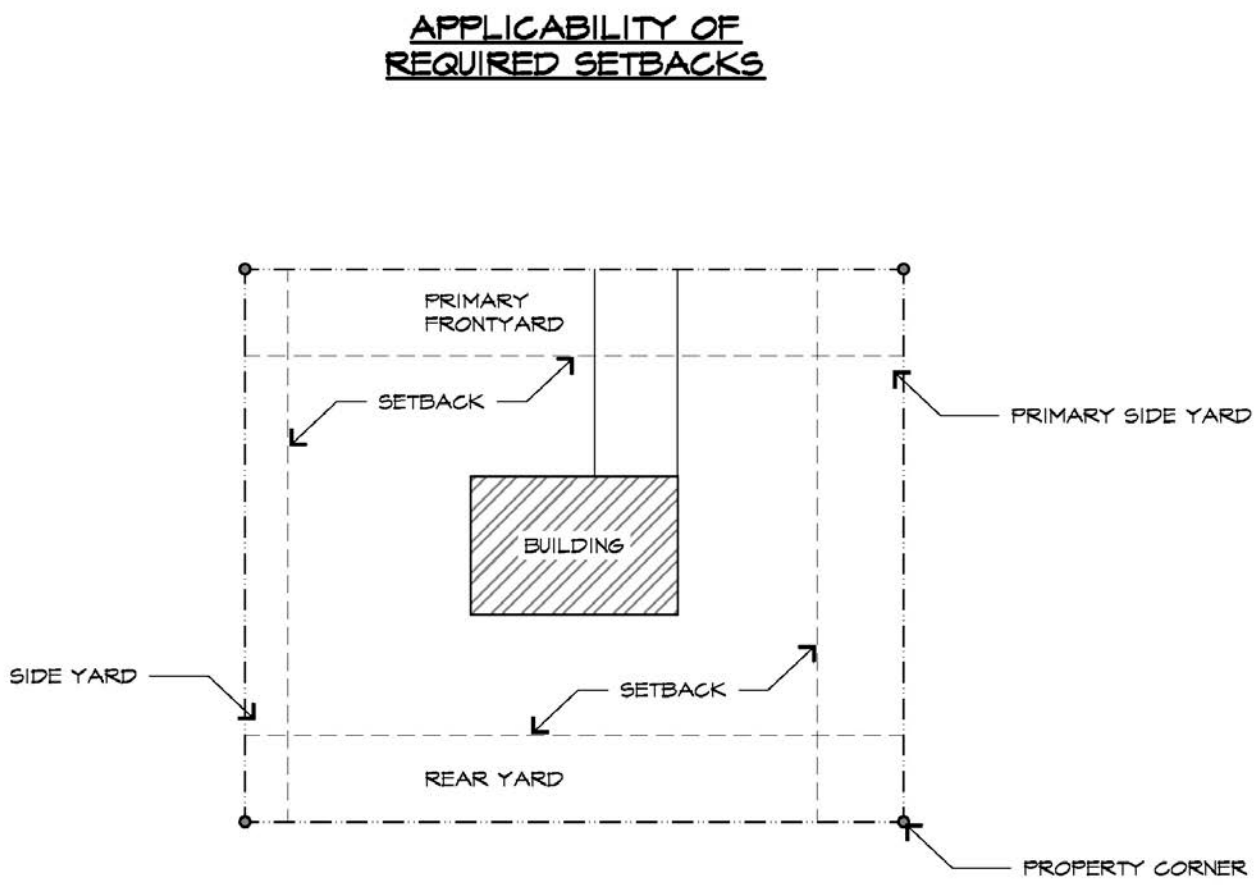
(a) Unless otherwise allowed for in this Land Development Code, no structure or land shall be developed, used or occupied except in accordance with the bulk regulations set out in the following table.

Land Use District / Land Use	Primary Front Yard (ft.)	Secondary Front Yard (ft.)	Primary Side Yard (ft.)	Secondary Side Yard (ft.)	Rear Yard (ft.)
Airport (AD)	25	25	10	10	25
Commercial 1 (C1)	25	15	10	5	10
Commercial 2 (C2)	15	15	10	5	10
Commercial Fishing Area (CFA), Commercial Fishing Special District (CFSD), and Commercial Fishing Village (CFV)	25	15	10	5	20
Conservation (C)	25	15	10	5	20
Destination Resort (DR)	50	25	20	15	30
Improved Subdivision (IS)	25	15	10	5	20
Industrial (I)	25	15	10	5	25
Mainland Native (MN)	25	25	10	5	20
Maritime Industries (MI)	25	25	10	5	25
Military Facilities (MF)	25	15	10	5	20
Mixed Use (MU)	15	15	10	5	10

Land Use District / Land Use	Primary Front Yard (ft.)	Secondary Front Yard (ft.)	Primary Side Yard (ft.)	Secondary Side Yard (ft.)	Rear Yard (ft.)
Native Area (NA)	25	15	10	5	20
Offshore Island (OS)	25	15	10	5	20
Park and Refuge (PR)	25	15	10	10	10
Recreational Vehicle (RV)*	25	15	10	5	10
Sparsely Settled (SS)	25	15	10	5	10
Suburban Commercial (SC)	25	15	10	5	10
Suburban Residential (SR)	25	15	10	5	10
Suburban Residential Limited (SR-L)	25	15	10	5	10
Urban Commercial (UC)	15	15	10	5	10
Urban Residential (UR):	15	15	10	5	10
Urban Residential Mobile Home (URM)**					
Lots less than 50 feet wide	10	10	5	5	10
Lots 50 feet wide or greater	10	10	10	5	10
Urban Residential Mobile Home - Limited (URM-L)**	10	10	10	10	10

*For RV parks within the RV Land Use District, the RV setback requirements shall apply to the district/RV park boundaries and not to the interior RV spaces.
**For mobile home parks within the URM and URM-L Land Use Districts, the setback requirements shall apply to the district/mobile home park boundaries and not to the interior mobile home spaces.

(b) Applicability of required setbacks.



Sec. 131-2. Maximum Height.

(a) No structure or building, including mechanical equipment and landfills, shall be developed that exceeds a maximum height, as defined in Section 101-1, of 35 feet. Exceptions will be allowed for spires and/or steeples on structures used for institutional and/or public uses only; chimneys; radio and/or television antennas; flagpoles; solar apparatus; utility poles and/or transmission towers; and certain antenna supporting structures with attached antenna and/or collocations as permitted in Chapter 146 of this LDC. However, in no event shall any of these exceptions or exclusions be construed to permit any habitable or usable space to exceed the maximum height limitation. In the case of airport districts, there shall be no exceptions to the 35-foot height limitation.

Sec. 131-3. Applicability of Required Setbacks.

(a) *Bufferyards.* When a bufferyard is required under the provisions of Chapter 114, Article V, compliance with the bufferyard provisions along a property line shall relieve the necessity of complying with the setback provisions along the same property line if the width of the bufferyard is greater than the applicable setback requirement set forth in Section 131-1.

(b) *Shoreline setbacks.* All development shall be set back from shorelines as required in Section 118-12. Docking and mooring facilities within the shoreline setback shall be set back from side property lines in accordance with Section 118-12. The side yard setback does not apply to a utility pole, seawall, fence, retaining wall, or marginal dock.

(c) *Front yard setbacks.* A front yard is a required setback on a parcel of land that is located along the full length of the front property line of the parcel, is generally the property frontage to which development on the parcel is oriented and is generally adjacent a road. On parcels fronting more than one road, such as corner lots and double frontage parcels, each yard along a road shall be a front yard. The front yard setback does not apply to a utility pole.

(1) *Single frontage parcels.* For a parcel that has only a single road frontage, the primary front yard requirement set forth in Section 131-1 shall be applied.

(2) *Double frontage parcels.* For a parcel that has road frontage along two or more roads, the primary front yard requirement set forth in Section 131-1 shall generally be applied to the front yard to which development on the parcel is oriented. The secondary front yard requirement set forth in Section 131-1 shall be applied to the remaining front yard(s). For parcels located within the median of U.S. Highway 1, the primary front yard requirements shall be applied to both front yards situated along the highway right-of-ways.

(3) *Accessory driveways and walkways.* Accessory structures, limited to driveways and walkways, may be permitted within a required front yard setback provided they do not exceed six (6) inches in height as measured from grade. In no event shall the total combined area of all accessory structures occupy more than 60 percent of the required front yard setback area.

(4) *Off-street parking on residentially developed parcels.* Any required off-street parking spaces may be located on an accessory driveway within the front yard setback on a parcel developed exclusively with a residential use. Any vehicle utilizing such an off-street parking space shall be properly licensed and operable.

(5) *Signs, fences and landscaping.* Signs as permitted in Chapter 142, fences as permitted in Chapter 114 and landscaping may be permitted in a required front yard setback.

(d) *Side yard setbacks.* A side yard is a required setback on a parcel of land that is located along the full length of the side property line and is generally between the front and rear property lines. The side yard setback does not apply to a utility pole, seawall, fence, retaining wall, or marginal dock.

(1) *Side yard requirements (excluding four-sided platted corner lots).* With the exception of four-sided platted corner lots, the primary side yard requirement set forth in Section 131-1 shall be applied to one side yard. The secondary side yard requirement set forth in Section 131-1 shall be applied to any remaining side yards.

(2) *Side yard requirements for four-sided platted corner lots.* On a platted corner lot with only four sides, there shall be a primary front yard, secondary front yard, rear yard, and a single side yard. For such lots, there shall be no primary side yard setback requirement, and the single side yard shall be subject to the secondary side yard setback requirement set forth in Section 131-1.

(3) *Accessory driveways, walkways, patios and decking on residentially developed parcels.* Accessory structures, limited to driveways, walkways, patios, and decks, may be permitted within a required side yard setback on a parcel developed exclusively with a residential use if the structure meets the provisions of this subsection. Such an accessory structure shall a) not exceed six (6) inches in height as measured from grade; b) be situated at least one (1) foot from the side yard property line; and c) be constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. In no event shall the total combined area of all accessory structures occupy more than 80 percent of the required side yard setback area.

(4) *Accessory stairs and platforms to elevate electrical equipment on parcels developed with a residential dwelling unit built prior to March 15, 2012.* Accessory structures, limited to stairs and platforms, may be permitted within a required side yard setback on a parcel developed exclusively with a residential use if the following provisions are met: a) the residential unit was issued a certificate of occupancy prior to March 15, 2012; b) the accessory structure is required to elevate electrical equipment at or above required flood elevations; c) the accessory structures shall be situated at least two (2) feet from the side yard property line; and d) the accessory structures must be constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. In no event shall the total combined area of all accessory structures occupy more than 80 percent of the required side yard setback area.

(e) *Rear yard setbacks.* A rear yard is a required setback on a parcel of land that is located along the full length of the rear property line and is generally on the side opposite to the primary front yard.

(1) *Accessory structures on residentially developed parcels.* An accessory structure may be permitted within a required rear yard setback on a parcel developed exclusively with a residential use if the structure meets the provisions of this subsection. An accessory structure not exceeding eighteen (18) inches in height as measured from grade may be permitted if the structure is a) situated at least one (1) foot from the rear yard property line and b) constructed to avoid any off-site discharge of stormwater from the subject parcel in accordance with Section 114-3. An accessory structure not exceeding twelve feet (12) feet in height as measured from grade may be permitted if

the structure is a) situated at least ten (10) feet from the rear property line. In no event shall the total combined area of all accessory structures occupy more than 60 percent of the required rear yard setback area.

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Chapter 134 MISCELLANEOUS RESTRICTIONS

ARTICLE I. IN GENERAL

Sec. 134-1. Vacation Rental Uses.

(a) Special vacation rental permit.

An owner or agent is required to obtain an annual special vacation rental permit for each dwelling unit prior to renting any dwelling unit as a vacation rental, as defined in section 101-1, except as provided for under subsection (b) of this section. A special vacation rental permit is nontransferable between owners. A change of ownership of the vacation rental unit shall require the new owner or his agent to obtain a new vacation rental permit for the residential dwelling unit.

(b) Exemptions.

A vacation rental permit is not required for the following:

(1) A vacation rental of a dwelling unit located within a controlled access, gated community with a homeowner's or property owner's association that expressly regulates or manages vacation rental uses; or
(2) A vacation rental of a dwelling unit within a multifamily building located within a multifamily district, which has 24 hour on-site management or 24 hour on-site supervision that has received an exemption from the planning director. To meet these site management or supervision requirements, a designated individual must be physically located within the building or within 300 feet of the subject building and must be available at all times to respond to tenants' and neighbors' complaints. To obtain an exemption under the provisions of this section, the owner or agent must submit an application to the planning department in a form prescribed by the planning director.

(c) Vacation rental manager license.

A vacation rental manager license is required from the county planning department for an individual to be a vacation rental manager under the provisions of this section. The vacation rental manager shall be:

(1) The designated contact for responding to complaints made by neighbors against vacation rental tenants; and
(2) Responsible for maintaining the guest register, leases, and official complaint response records for a vacation rental unit as required by this section.

(d) Permit, license and fees.

(1) Special vacation rental permits will be issued by the planning director, or designee, upon payment of a nonrefundable fee and submittal of a complete application in a form prescribed by the planning director in accordance with subsection (f) of this section.
(2) Vacation rental manager licenses will be issued by the planning director, or designee, upon payment of a nonrefundable fee and submittal of a complete application to the planning department in a form prescribed by the planning director.
(3) The annual fees for the special vacation rental permit and vacation rental manager license shall be established by resolution of the board of county commissioners.
(4) A decision to approve or deny a special vacation rental permit may be appealed to the planning commission within 30 days pursuant to section 102-185.

(e) Regulations.

All special vacation rental units, requiring a special vacation rental permit shall comply with the following regulations at all times:

(1) No more than one motorized watercraft, including a jet ski or wave runner, shall be allowed at each vacation rental unit. The watercraft may be moored at either an existing on-site docking facility or stored on a trailer in an approved parking space.
(2) Vehicles, watercraft and trailers shall not be placed on the street or in yards. All vehicles, watercraft and boat trailers must be parked or stored off-street in parking spaces specifically designated and approved in the special vacation rental permit. One vehicle parking space shall be required per bedroom or efficiency unit and one boat trailer space per vacation rental unit.
(3) No boat docked at a vacation rental property shall be chartered to a person other than registered guests of the vacation rental unit or used for live-aboards, sleeping or overnight accommodations. In addition, recreation vehicles shall not be used for sleeping or overnight accommodations at the vacation rental unit.
(4) Occupants shall be prohibited from making excessive or boisterous noise in or about any residential dwelling unit at all times. Noise, that is audible beyond the boundaries of the residential dwelling unit, shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. weekdays and 11:00 p.m. and 9:00 a.m. on weekends.
(5) All trash and debris on the vacation rental property must be kept in covered trash containers. Each vacation rental unit must be equipped with at least four covered trash containers for such purpose. Owners must post, and occupants must comply with, all trash and recycling schedules and requirements applicable to the vacation rental unit. Trash containers must not be placed by the street for pick-up until 6:00 p.m. the night before pick-up and must be removed from the area by the street by 6:00 p.m. the next day.
(6) A tenant's agreement to the forgoing rules and regulations must be made a part of each and every lease under F.S. § 509.01 for any vacation rental unit subject to the provisions of this section. These vacation rental regulations governing tenant conduct and use of the vacation rental unit shall be prominently posted within each dwelling unit subject to the provisions of this section along with the warning that violations of

any of the vacation rental regulations constitutes a violation of this Code subject to fines or punishable as a second degree misdemeanor and is also grounds for immediate termination of the lease and eviction from the leased premises and criminal penalties under F.S. § 509.151 ("defrauding an innkeeper"), F.S. § 509.141 ("ejection of undesirable guests"), F.S. § 509.142 ("conduct on premises) or F.S. § 509.143 ("disorderly conduct on premises, arrest").

(7) The owner or agent shall require a lease to be executed with each vacation rental use of the property and maintain a guest and vehicle register listing all vacation rental occupants' names, home addresses, telephone numbers, vehicle license plate and watercraft registration numbers. Each lease and this register shall be kept by the vacation rental manager and available for inspection by county code enforcement personnel during business hours.

(8) Vacation rental units must be registered, licensed and meet all applicable state requirements contained in F.S. ch. 212 (Florida Tax and Revenue Act) and F.S. ch. 509 (Public Lodging Establishments) as implemented by the Florida Administrative Code, as may be amended.

(9) The vacation rental use must comply with all State of Florida Department of Health and State of Florida Department of Environmental Protection standards for wastewater treatment and disposal.

(10) All vacation rental units shall have a vacation rental manager, who has been issued a vacation rental manager license by the planning department as provided for in subsection (h) of this section. The vacation rental manager shall reside within and be licensed for that section of the county (Upper, Middle, and Lower Keys) where the vacation rental unit is located and be available 24 hours per day, seven days a week for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of this section. Any change in the vacation rental manager shall require written notification to the planning department and notification by certified return mail to property owners within 300 feet of the subject dwelling.

(11) Complaints to the vacation rental manager concerning violations by occupants of vacation rental units to this section shall be responded to within one hour. The neighbor who made the complaint shall be contacted by telephone or in person and informed as to the results of the actions taken by the manager. A record shall be kept of the complaint and the manager's response for a period of at least three months after the incident, which shall be available for inspection by the county code enforcement department during business hours.

(12) The name, address, and telephone number of the vacation rental manager, the telephone number of county code enforcement department and the number of the special vacation rental permit shall be posted and visible from the front property line of the vacation rental unit.

(13) The tenants' agreement with the rules of conduct shall be posted in a conspicuous location in each vacation rental unit.

(f) Special vacation rental permit application.

A complete special vacation rental permit application shall include the following:

(1) The complete legal description, street address, RE number and location of the vacation rental unit;
(2) Proof of ownership and the name, address and telephone number of each and every person or entity with an ownership interest in the dwelling unit;
(3) An approved Florida State Department of Health or Florida State Department of Environmental Protection inspection or certification of the adequacy of the sewage disposal system for use as a vacation rental unit;
(4) The gross square footage of the dwelling unit, location and number of rooms, bedrooms, bathrooms, kitchens, apartments, parking spaces and any other information required to determine compliance with vacation rental requirements and compliance with this chapter;
(5) A valid and current Florida Department of Revenue sales tax identification number under F.S. ch. 212 (Florida Tax and Revenue Act) and a valid and current permit, license or approval under F.S. ch. 509 (public lodging establishments);
(6) The name, address, and telephone number of the vacation rental manager, including the vacation rental manager's license number;
(7) The applicant shall sign a written statement granting authorization to county code enforcement department to inspect the premises of the vacation rental unit prior to the issuance of the special vacation rental permit and at any other time after issuance of such permit, concerning compliance with the county land development regulations;
(8) The application shall bear the signature of all owners, all authorized agents and authorized managers of the owners; and
(9) Any additional information required to determine compliance with the provisions of this section.

(g) Notification to adjacent neighbors and permit, approval, issuance and appeal.

(1) The applicant or agent shall send a "Notice of Vacation Rental Use Application" by certified return mail to all property owners located within 300 feet of the dwelling unit which is the subject of the special vacation rental permit application, not less than 30 days prior to the date of approval of the application. The notice of application shall be in a form prescribed by the planning director or his designee and shall clearly state the name, address and day/evening telephone numbers of each and every vacation rental manager, agent, caretaker and owner of the dwelling unit; the number of the county code enforcement department; and a copy of the tenants agreement. Notice to the adjacent property owners must include the following statement:

"You have the right to appeal a decision to approve or deny this special vacation rental permit to the planning commission within 30 days under section 102-185. You may have other rights that the county cannot enforce. Review of a special vacation rental permit application by the county will consider the existence of valid private deed restrictions, restrictive covenants or other restrictions of record that may prohibit

the use of the dwelling unit for vacation rental purposes. You may wish to consult an attorney concerning these private rights."

(2) The applicant or agent shall provide proof to the planning department of submitting the "Notice of Vacation Rental Use Application." The special vacation rental permit shall not be issued until proof of this notification is provided and the special vacation rental permit has been approved by the planning director after completion of an on-site inspection of the subject dwelling unit by the code enforcement department. When approved by the planning director, the special vacation rental permit shall not be issued until 30 days after the notices of application were sent to all property owners located within 300 feet of the dwelling unit that is the subject of the permit.

(h) Fines or revocation of special vacation rental use permit.

A special vacation rental permit shall be revoked by the planning commission and/or fines levied by the code enforcement special magistrate or a court of competent jurisdiction after a finding of a violation by the permit holder of this section, the special vacation rental permit or permit conditions or any material misrepresentation on the permit application, after the owner is given notice and a hearing is held by the planning commission, code enforcement special magistrate or a court of competent jurisdiction.

(i) Duration and renewal of special vacation rental use permit.

Special vacation rental use permits shall expire one year after the date of their issuance, unless renewed within 30 days of their expiration date. Renewal of a special vacation use permit requires the owner or agent to submit an application in a form prescribed by the planning director to the planning department and payment of a nonrefundable fee, including proof of a current license and registration under F.S. ch. 509 and F.S. ch. 212.

(j) Vacation rental manager license application, issuance, renewal, fines, and revocation.

(1) An individual shall submit an application for a vacation rental manager license in a form prescribed by the planning director accompanied with a payment of a nonrefundable fee. The license shall be issued for a period of one year and renewable annually. The license shall be for only one specific section of the county (Upper, Middle, or Lower Keys) and no individual shall apply for or be issued more than one vacation rental manager license at a time.

(2) After notice is given to the vacation rental manager and a public hearing is held, a vacation rental manager license shall be revoked by the planning commission and/or fines levied by the code enforcement special magistrate or court of competent jurisdiction upon a finding of: a total of two or more no responses to complaints registered by the public concerning tenants not following the terms of the tenants agreement, during any single year of the vacation rental manager's license; or two or more violations of this section which are pertinent to the duties and responsibilities of a vacation rental manager. A vacation rental manager license shall be revoked if the

license holder is found in violation of any of the regulations in subsections (k)(1) — (k)(3) of this section.

(3) An individual who has had his license revoked shall not be eligible to resubmit an application for obtaining a new vacation rental manager license until two years after the date of revocation of his license.

(k) Prohibitions, enforcement, and penalties.

(1) It shall be unlawful for any landlord, tenant, agent or other representative of a landowner to rent, lease, advertise or hold out for rent any dwelling unit for vacation rental use in any district where a vacation rental use is prohibited, except as otherwise exempted under this section.

(2) It shall be unlawful for any landlord, tenant, agent or other representative of a landlord to rent, lease, advertise or hold out for rent any dwelling unit for a vacation rental use without a special vacation rental permit, except as otherwise exempted under this section.

(3) After the effective date of the ordinance from which this section is derived, leases, subleases, assignments or any other occupancy agreements, for compensation for less than 28 days in duration:

a. Shall not be entered into or renewed once they have expired or have terminated in any district in which tourist housing use is prohibited or in any district in which a vacation rental use is allowed unless a special vacation rental permit, building permit, inspection and certificate of occupancy for the vacation rental use (or for the conversion of an existing dwelling unit to vacation rental use) are first obtained; and

b. Any pre-existing vacation rental uses shall not be considered a lawful nonconforming use under section 102-56 and must be discontinued in any land use districts that prohibit vacation rental uses no later than 30 days after the effective date of the ordinance from which this section is derived. Except that a vacation rental use that was established, and had obtained all of the required state and local permits and licenses, prior to September 15, 1986, or under any Code provisions that expressly allowed vacation retail uses, may remain pursuant to section 102-56.

(4) Section 8-36 shall not bar code enforcement for new vacation rental violations occurring after the effective date of the ordinance from which this section is derived.

(5) Prima facie evidence of vacation rental uses of a dwelling unit shall include:

a. Registration or licensing for short-term rental or transient rental use by the state under F.S. chs. 212 (Florida Tax and Revenue Act) and 509 (public lodging establishments);

b. Advertising or holding out a dwelling unit for vacation rental use;

c. Reservations, booking arrangements or more than one signed lease, sublease, assignment, or any other occupancy or agreement for compensation, trade, or

other legal consideration addressing or overlapping any period of 28 days or less; or

d. The use of an agent or other third person to make reservations or booking arrangements.

(6) A violation of any of the regulations in subsections (k)(1)—(k)(3) of this section shall be punishable as a second degree misdemeanor and by a fine of up to $500.00 per day, per unit, per violation. The code enforcement department may also enforce the terms of this section by bringing a case before the special magistrate pursuant to section 8-37, or by citation under section 8-35, F.S. § 162.21 (as may be amended), or 76-435, Laws of Florida (as may be amended). If a code enforcement citation is issued, the fine shall be $250.00 for the first offense and $500.00 for each subsequent offense.

(7) In addition to any other remedies available to the county (including code enforcement pursuant to F.S. ch. 162). The county or any or other adversely affected party may enforce the terms of this section in law or equity. Any citizen of the county may seek injunctive relief in a court of competent jurisdiction to prevent a violation of this section or to revoke a special vacation rental permit or vacation rental manager license, as set forth in this section. Attorney's fees and costs incurred in an action to enforce these regulations concerning vacation rental uses may be awarded to a substantially prevailing party at the discretion of the court.

Sec. 134-2. Home Occupation Special Use Permit.

(a) *Applicability*. Home occupation special use permits may be approved in any land use (zoning) district in which residential use is allowed, including nonconforming residential uses where such uses were otherwise lawfully established.

Home occupation means a business, profession, occupation or trade operated from and/or conducted within a residential dwelling unit (or within an accessory structure thereto) for gain or support by a resident of the dwelling unit. For the purposes of this section, home occupations include mobile businesses that are based or operated from a residence or residential property.

(b) *Applications*. Applications for home occupation special use permits shall be submitted to the Planning Director on forms provided by the Planning Director. The application shall include a properly executed affidavit and agreement from the applicant attesting to and agreeing to compliance with the standards and requirements for home occupations as outlined in this section.

(c) *Authority*. The Planning Director is authorized to approve and otherwise administer home occupation special use permits as specifically set forth in this section.

(d) *Review by the Planning Director*. Within 15 working days of receiving a complete application, the Planning Director shall determine whether the proposed home occupation is consistent with the following standards and requirements:

(1) The home occupation is incidental and secondary to the principal residential use of the residential dwelling unit;
(2) The home occupation does not change the essential residential character of the principal residential use;
(3) Not more than one person who is a nonresident of the residential_dwelling unit is directly or indirectly employed by or for the home occupation;
(4) The home occupation use does not occupy more than 20 percent of the total floor area of the residential dwelling unit and, if the home occupation use utilizes an accessory structure(s), it does not occupy more than 20 percent of the total covered and enclosed residential floor area on the property;
(5) The home occupation does not involve any retail sales or service that necessitates or requires customers to visit the residential dwelling unit or the property, nor does the physical address of the residence appear on any advertising materials including stationary and business cards;
(6) Activities associated with the home occupation are not visible from any other residential dwelling unit. If the home occupation utilizes an accessory structure, the structure is covered and enclosed;
(7) No sign advertising the home occupation is displayed on the premises;
(8) The home occupation does not involve outdoor storage, including but not limited to any equipment or materials;
(9) The home occupation does not involve the use of mechanical, electrical or other equipment that produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisance outside the residential dwelling unit or accessory structure in which the home occupation occurs;
(10) The home occupation does not increase the average daily automobile trips generated by the residence in which the home occupation is located;
(11) Upon issuance of a permit, the applicant must immediately apply for any required license(s) and/or business tax for the home occupation where otherwise required, and continuously maintain such required license(s) and/or business tax for the duration of the issued permit;
(12) The home occupation does not store or dispose of any solid waste at the occupation address which was not generated at the occupation address; and
(13) The home occupation has obtained a commercial collection service agreement if the business creates or generates any solid waste at a location other than the home occupation address.

(e) *Public notification of pending approval*. The Planning Director, after determining that an application for a home occupation special use permit is in compliance with the requirements of this section, shall give notice of the pending approval as follows:

(1) The Planning Director shall provide written notice by regular mail to owners of real property located within 300 feet of the property that is the subject of the proposed home occupation;

(2) The applicant shall post the property of the proposed home occupation with a waterproof sign(s) provided by the Planning and Environmental Resources Department which is so located that the notice(s) shall be easily visible from all public streets and public ways abutting the property. The property shall remain posted for no less than 30 calendar days beginning within two weeks of the mailing date of the written notice required by subsection (e)(1); and

(3) The notices in subsections (e)(1) and (e)(2) of this section shall provide a brief description of the proposed home occupation and indicate where the public may examine the application. The cost of providing this notice shall be borne by the applicant.

(f) *Decision by the Planning Director*. After 30 calendar days of posting the property and upon a finding that the proposed home occupation complies with all of the requirements of this section, the Planning Director shall issue a home occupation special use permit, with or without conditions. The permit and the affidavit attesting to compliance with the above requirements shall be filed with the clerk of the court and recorded in the official records of the county. The permit shall authorize only the current resident(s) of the dwelling unit for the particular home occupation proposed and shall not be transferable to another location or to another person or entity. Such current resident(s) who have obtained a home occupation special use permit shall immediately notify the Planning Director in writing, by U.S. Postal Service certified mail return receipt requested, when such permitted home occupation special use has been abandoned, discontinued, or otherwise ceased.

(g) *Public hearing on an application for a home occupation special use permit*. If requested in writing to the Planning Director by the applicant, or an adversely affected owner or resident of real property located in the county, during the required 30 calendar days of the posting, a public hearing date shall be scheduled on the application for a home occupation special use permit. All costs related to the public hearing shall be the responsibility of the applicant. The public hearing shall be conducted by the Planning Commission in accordance with the provisions of Section 110-6.

(h) Expiration. A permit issued pursuant to this section shall not be transferable and shall automatically expire upon the sale of or transfer of an interest in the permitted dwelling unit. If permitted applicant intends to remain at the permitted dwelling unit and lawfully continue the authorized special use after such sale or transfer of interest(s), the permitted applicant shall notify, by notarized affidavit, the planning director, by U.S. Postal Service certified mail return receipt requested, of his/her intent to lawfully continue the originally permitted home occupation special use. Such notification must be received by the planning director at least thirty (30) days prior to such sale or transfer of interest(s).

(i) *Revocation*. The Planning Director shall have the authority to initiate actions to revoke home occupation special use permits and all such actions shall require a public hearing to be conducted before the Planning Commission in accordance with Section 102-20. The Planning Commission shall have the authority to revoke any home occupation special use permit where there is competent and substantial evidence to establish any of the following:

(1) That an application for home occupation special use approval contains knowingly false or misleading information;
(2) A violation by the holder of a home occupation special use permit of any provision of this section;
(3) A violation of any condition of the home occupation special use permit imposed pursuant to this section; or
(4) That the home occupation constitutes a public or private nuisance under state law.
(5) That the principal or accessory structure(s) which is/are subject to the permitted home occupation special use is/are illegal or has/have been illegally improved.
(6) That the principal residential structure or dwelling unit of which is/are subject to the permitted home occupation special use has been destroyed.
(7) That the underlying real property's (of which is subject to the permitted home occupation special use) principal residential use has been abandoned, discontinued, or otherwise ceased/terminated.
(8) That the permitted home occupation special use has been abandoned, discontinued, or otherwise ceased/terminated.

Sec. 134-3. Local Exemption to Allow Patrons' and Employees' Dogs in Public Food Service Establishments.

(a) Definitions.

Division means the division of hotels and restaurants of the State of Florida Department of Business and Professional Regulation.

Employee means a person employed by the subject public food service establishment for wages or salary or on an official volunteer basis.

Patron means the same as guest as provided in F.S. § 509.013.

Public food service establishment means the same as provided in F.S. § 509.013.

(b) No dog shall be in a public food service establishment unless the public food service establishment has received and maintains an unexpired and valid permit pursuant to this section allowing dogs in designated outdoor areas of the establishment and in accordance with F.S. § 509.233.

(c) Application requirements.

Public food service establishments must apply for and receive a permit from the county before patrons' or employees' dogs are allowed on the premises. The county shall establish a reasonable fee to cover the cost of processing the initial application and renewals. The application for a permit shall require such information from the applicant as is deemed reasonably necessary to enforce the provisions of this section, but shall require, at a minimum, the following information:

(1) Name, location, mailing address and division of hotels and restaurants-issued license number of the public food service establishment.

(2) Name, mailing address, and telephone contact information of the permit applicant. The name, mailing address, and telephone contact information of the owner of the public food service establishment shall be provided if the owner is not the permit applicant.

(3) A diagram and description of the outdoor area which is requested to be designated as available to patrons' or employees' dogs, including dimensions of the designated area; a depiction of the number and placement of tables, chairs, and restaurant equipment, if any; the entryways and exits to the designated outdoor area; the boundaries of the designated area and of the other outdoor dining areas not available for patrons' or employees' dogs; any fences or other barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information as is deemed necessary by the county. The diagram shall be accurate and to scale but need not be prepared by a licensed design professional. A copy of the approved diagram shall be attached to the permit.

(4) A description of the days of the week and hours of operation that patrons' or employees' dogs will be permitted in the designated outdoor area.

(5) Prior to the issuance of a permit, the applicant shall furnish the permitting official with a signed and notarized statement that the permittee shall hold harmless and indemnify the county, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

(6) Permittee shall purchase and maintain liability insurance consistent with the terms and conditions of the latest version of the Commercial General Liability Coverage Form as issued by the Insurance Services Office (ISO). The permittee must ensure that such insurance does not exclude or limit coverage for claims arising out of incidents related to or caused by animals. Such insurance shall provide limits of not less than $1,000,000.00 per occurrence. All insurance shall be from companies duly authorized to do business in the State of Florida and acceptable to the county. The county shall be named as an "Additional Insured" on the required insurance. All policies required under this ordinance shall provide that such policies may not be terminated or cancelled without 45 days' written notice. Permittee shall send notice of termination or cancellation of insurance policies via certified mail to the licensing official. Termination or cancellation of the insurance required will result in the permit being suspended immediately and revoked as set forth in section (e) herein.

(d) Regulations.

Public food service establishments that receive a permit for a designated outdoor area pursuant to this section shall require that:

(1) Employees wash their hands promptly after touching, petting, or otherwise handling any dog(s) and shall wash their hands before entering other parts of the public food service establishment from the designated outdoor area. "Employee" or "employees" shall include, but is not limited to, the owner(s), operator(s), manager(s) or assistant manager(s) of the public food service establishment.

(2) Employees are prohibited from touching, petting or otherwise handling any dog while serving or carrying food or beverages or while handling or carrying tableware.

(3) Patrons in a designated outdoor area shall be advised by appropriate signage, at conspicuous locations, that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.

(4) Patrons in a designated outdoor area shall be advised by appropriate signage, that all dogs shall be kept on a leash, that at all times all patrons with dogs shall keep such dogs under reasonable control, and that such patrons shall not leave their dogs unattended.

(5) Employees and patrons shall be instructed that they shall not allow dogs to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations. Patrons shall be advised of this requirement by appropriate signage at conspicuous locations.

(6) Patrons and employees' shall keep their dogs on a leash at all times and shall keep their dogs under reasonable control. Patrons and employees' shall not leave their dogs unattended.

(7) Employees and patrons shall not allow any part of a dog to be on chairs, tables, or other furnishings.

(8) Employees shall clean and sanitize all table and chair surfaces with an approved product between seating of patrons.

(9) Employees shall remove all dropped food and spilled drink from the floor or ground as soon as possible but in no event less frequently than between seating of patrons at the nearest table.

(10) Employees and patrons shall remove all dog waste immediately and the floor or ground shall be immediately cleaned and sanitized with an approved product. Employees shall keep a kit with the appropriate materials for this purpose near the designated outdoor area. Dog waste shall not be carried in or through indoor portions of the public food establishment.

(11) Employees and patrons shall not permit dogs to be in, or to travel through, indoor or non-designated outdoor portions of the public food service establishment, and ingress and egress to the designated outdoor portions of the public food service establishment must not require entrance into, or passage through, any indoor area of the food establishment.

(12) A sign or signs notifying the public that the designated outdoor area is available for the use of patrons and patrons' or employees' dogs shall be posted in a conspicuous manner that places the public on notice.

(13) A sign or signs informing patrons of these laws shall be posted on premises in a conspicuous manner and place.
(14) Employees and patrons shall not allow any dog to be in the designated outdoor areas of the public food service establishment if the public food service establishment is in violation of any of the requirements of this section, or if they do not possess a valid permit.
(15) Permits shall be readily available for inspection.
(16) All dogs shall wear a current county license tag or rabies tag or the patron shall have a current license certificate or rabies certificate immediately available upon request.

(e) Expiration and revocation.

(1) A permit issued pursuant to this section shall not be transferred to a subsequent owner upon the sale of a public food service establishment but shall expire automatically upon the sale of the establishment. The subsequent owner shall be required to reapply for a permit if the subsequent owner wishes to continue to allow patrons' or employees' dogs in a designated outdoor area of the public food service establishment.
(2) Permits shall expire two year(s) from the date of issuance, unless renewed by the application of the permittee and approved by the county.
(3) A permit may be revoked by the county if, the grounds for revocation has not been corrected within 30 days after notice to the permittee, the public food service establishment fails to comply with any condition of approval, fails to comply with the approved diagram, fails to maintain any required state or local license, or is found to be in violation of any provision of this section. If the ground for revocation is a failure to maintain any required state or local license or insurance as required under section (c)(6), the revocation may take effect immediately upon giving notice of revocation to the permit holder.
(4) If a public food service establishment's permit is revoked, no new permit may be approved until the expiration of 90 days following the date of revocation, providing that the public food service establishment is in compliance and has paid any fines that may be imposed.

(f) Complaints and reporting.

(1) Complaints may be made in writing to the Code Compliance Department which shall accept, document, and respond to all complaints. The Code Compliance Department shall timely report to the division of restaurants and hotels (the division) all complaints and the response to such complaints.
(2) The county shall provide the division with a copy of all approved applications and permits issued.
(3) All applications, permits, and other related materials shall contain the division-issued license number for the public food service establishment.
(4) The patron or employee, or both, may be issued civil citations for each violation of this section.

(g) Penalties.

Citations issued for violations of any provisions of this section shall be brought forth before the code enforcement special magistrate or in county court pursuant to F.S. Chapter 162 or Chapter 8 of the Code of Ordinances for Monroe County. Each instance of a dog on the premises of a public food service establishment without a permit is a separate violation.

Secs. 134-4—134-20. Reserved.

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ARTICLE II. SEXUALLY ORIENTED BUSINESSES

Sec. 134-21. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses as to promote the health, safety, and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the unincorporated area of the county. The provisions of this section have neither the purpose or intent of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or other aspects of constitutionally protected speech. It is not the intent of the BOCC to legislate with respect to matters of obscenity in this article, as those matters are regulated by federal and state law, particularly, F.S.Chapter 800 and F.S. Chapter 847. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny the distributors and exhibitors of sexually oriented entertainment access to their intended market. Neither is it the intent or effect of this article to condone or legitimize the distribution of sexually oriented material.

Sec. 134-22. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Sexually oriented bookstore means an establishment that rents and/or sells sexually oriented materials in any form to the public and meets any one of the following three tests:

(1) The revenues from sexually oriented materials represent more than ten percent of the gross revenues of the establishment over the same period;
(2) Twenty-five percent or more of the stock-in-trade consists of sexually oriented materials; or
(3) It advertises or recognizes itself in any forum as "XXX," "adult," "sex" or otherwise as a sexually oriented business.

Sexually oriented business means individually or in combination a sexually oriented bookstore, sexually oriented entertainment establishment, or sexually oriented motion picture theater as defined herein, and any other establishment whose employees display or expose specified anatomical areas as defined herein.

Sexually oriented entertainment establishment means an establishment whose employees exhibit or display specific sexual activities or expose specified anatomical areas while performing.

Sexually oriented materials means books, magazines, periodicals, or other printed matter, or photographs, CD-ROMs or other devices used to record computer images, films, motion pictures, video cassettes, digital video disks (DVDs), slides or other visual representations or

recordings which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

Sexually oriented motion picture theater means an establishment designed to permit the viewing of motion pictures and other film material that has as its' primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by the patrons thereof.

Specified anatomical areas means:

(1) Less than completely and opaquely covered: human genitals, pubic region, the human buttocks, and female breast below a point immediately above the top of the areola; and/or
(2) Human male genitals in a discernibly turgid state, even if completely covered.

Specified sexual activities means human genitals in a state of sexual stimulation or arousal or acts of human masturbation, sexual intercourse, sodomy, bestiality, or fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts.

Sec. 134-23. Applicability.

(a) Sexually oriented businesses shall be allowed in land use (zoning) districts that permit commercial development per Chapter 130, Article III, with the following restrictions:

    (1) No sexually oriented business shall be located within 500 feet of the property line of any property used for residential purposes.
    (2) No sexually oriented business shall be located within 500 feet of any property used as a place of worship, a public park, or a school.
    (3) No sexually oriented business shall be located within 500 feet of another sexually oriented business.
    (4) Sexually oriented businesses shall opaquely cover each window or other opening through which a person at the establishment may otherwise see inside the establishment.
    (5) Signs for a sexually oriented business shall not depict specified anatomical areas or specified sexual activities.

(b) For the purposes of subsection (a) of this section, distances from properties shall be calculated by straight line measurement from property line to property line, using the closest property lines of the parcels of land involved.

Sec. 134-24. Nonconforming Uses.

(a) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a resident, a property used as a place of worship, a park, or a school within 500 feet of it. This provision applies only to a legally established sexually oriented business, not to any sexually oriented business that had been terminated for any reason or discontinued for a period of 90 days or more subsequent to the location of the residential use, place of worship, park or school.

(b) Within one year of the effective date of the ordinance from which this section is derived, all existing sexually oriented businesses shall conform to the provisions of this article, or the use shall be terminated.

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Chapter 135 HISTORIC AND CULTURAL RESOURCES

ARTICLE I. ARCHAEOLOGICAL, HISTORICAL OR CULTURAL LANDMARKS

Sec.135-1. Purpose.

It is hereby declared a matter of public policy that the protection and enhancement of properties of historical, cultural, archeological, and architectural merit are in the interests of the health, prosperity, and welfare of the people of the county. Therefore, this article is intended to:

(1) Effect and accomplish the protection and enhancement of buildings, structures, objects, sites, districts, improvements, natural or man-made landscape elements, archeological resources, groups, integrated combinations, and portions thereof that represent distinctive elements of the county's cultural, social, economic, political, scientific, prehistoric, and architectural history;
(2) Safeguard the county's historical, cultural, archeological, and architectural heritage, as embodied and reflected in such individual buildings, structures, objects, sites, districts, and archeological areas;
(3) Foster civic pride in the accomplishments of the past;
(4) Promote the use of individual buildings, structures, objects, sites, and districts for the aesthetic pleasure, education, and welfare of the people of the county;
(5) Protect and enhance the county's historical, cultural, archaeological, and architectural attraction to visitors and thereby support and stimulate the economy; and
(6) Encourage new buildings and development that will be harmonious with the existing historic attributes of the county.

Sec. 135-2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certificate of appropriateness means an authorization for work to be done to a designated historic property or structure or any property or structure within the Tavernier Historic District. A certificate of appropriateness is not a building permit. A county building permit shall be issued prior to the commencement of work on such property or structure. There are two types of certificates:

(a) Regular Certificate of Appropriateness: issued by the Planning Director for ordinary repairs or maintenance to a designated historic property or structure, or any property or structure within the Tavernier Historic District; and
(b) Special Certificate of Appropriateness: issued by the Historic Preservation Commission for the renovation, rehabilitation, restoration, or demolition of a contributing or designated historic property or structure, for new construction within the Tavernier Historic District, or for permission to dig or otherwise excavate in the case of an archeological landmark. All renovation, rehabilitation, restoration, or demolition of contributing or designated historic

public property or structures shall also be approved by the BOCC, following recommendation by the Historic Preservation Commission.

Contributing property or structure means a property or structure within the Tavernier Historic District that is listed on the National Register of Historic Places or the Florida Master Site File list of historical structures, or is a BOCC designated historic property or structure.

Demolition means the complete or partial disassembly, dismantlement, wrecking, or removal of a building, structure, or object on any site.

Demolition by neglect means abandonment of a building or structure by the owner resulting in such a state of deterioration that its self-destruction is inevitable, or where demolition of the building or structure to remove a safety hazard is a likely result.

Designated historic property or structure means a building, site, structure, or object that is designated by BOCC resolution as an archeological, historic, or cultural landmark in accordance with this article.

Historic Preservation Commission, referred to in this article as the HPC, means the board of citizens appointed by the BOCC to perform the functions delegated to it by this article.

Improvement means changes in the condition of real property brought about by the expenditure of labor or money for repair, restoration, renovation, rehabilitation, or reconstruction.

National Register of Historic Places means the list of historic properties significant in American history, architecture, archeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966 (16 USCA 470), as amended.

New building, in the Tavernier Historic District Preservation Guidelines, means new buildings developed within the Tavernier Historic District.

Non-contributing property or structure, means a building within the Tavernier Historic District that is not recorded as historic and does not meet the definition of contributing structure.

Ordinary repairs or maintenance means work done to prevent the deterioration of a building or structure, or any part of a building or structure, by keeping the building or structure as nearly as practicable to its condition before any deterioration, decay, or damage.

Reconstruction means that process of reproducing, by new construction, the exact form and detail of a demolished building, structure, or object, as it appeared at a certain point in time.

Renovation or rehabilitation of historic sites, or the portions of those sites that have historical or cultural significance, means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those

portions or features of the property that are significant to its historical, architectural, cultural, and archeological values. For historic properties, or the historic portions of such properties that are of archeological significance or that are severely deteriorated, the term "renovation or rehabilitation" means the act or process of applying measures designed to sustain and protect the existing form and integrity of a property, or re-establishing the stability of an unsafe or deteriorated property while maintaining the essential form of the property as it presently exists.

Restoration means the act or process of accurately recovering the form and details of a historic property and setting, as it appeared at a particular period of time, by means of the removal of later work or by the replacement of missing earlier work.

Tavernier Historic District means the area within the historic district overlay boundary as identified in and adopted within the Livable CommuniKeys Master Plan Tavernier Creek to Mile Marker 97 and subject to the Tavernier Historic District Preservation Guidelines.

Undue economic hardship means there are no reasonable economically beneficial uses of the property for the owner.

Sec. 135-3. Historic Preservation Commission.

(a) Generally.

The Historic Preservation Commission (HPC) is a governmental agency of the county. The HPC is vested with the authority to designate and regulate historic properties within the unincorporated area of the county as prescribed in this article.

(b) Appointment and membership qualifications.

The HPC consists of five members appointed by the BOCC. Each member shall be a resident of the county at the time of appointment and during his term in office. To the extent possible, the BOCC shall appoint four individuals who are professionals in any of the disciplines of architecture, history, architectural history, planning, archeology, or other historic preservation related disciplines such as urban planning, American studies, cultural geography, or cultural anthropology. The BOCC shall also appoint one lay individual with a demonstrated special interest, experience, or knowledge in history, architecture, archaeology, or related disciplines.

(c) Membership removal, terms, and vacancies.

HPC members serve overlapping terms of three years. HPC members serve without compensation, but are entitled to the reimbursement of expenses as provided in F.S. § 112.61 and by ordinance. A member may be removed from office prior to the expiration of his term for cause by a majority vote of the BOCC. However, a member will automatically vacate his seat if the member fails to attend four meetings in a calendar year. When a vacancy in office due to absence occurs, the BOCC shall appoint a replacement within 60 days to serve out the remainder of the vacated member's term.

(d) Organization and administration.

The members of the HPC shall elect a chair and vice-chair, for a one-year term each. The chair or, in the absence of the chair, the vice-chair, shall preside at all meetings and may vote. The Planning Director shall designate staff to advise and provide clerical support to the HPC. The HPC secretary, designated by the Planning Director, shall record and transcribe the minutes of all commission meetings. The attorney assigned to the Growth Management Division shall be the attorney to the HPC. The Planning Director shall be the custodian of all HPC records. The HPC shall meet at least once per month at a date and time established by the HPC, unless there is no business pending. However, regardless of the lack of pending business, the HPC shall meet at least six times during a calendar year. To the maximum extent practicable, HPC meetings shall be held at locations throughout the Upper, Middle, and Lower Keys, that are closest in proximity to the majority of discussion items on the agenda.

(e) Notice.

All public hearings (both HPC and BOCC) required under this article shall be noticed at least 15 days prior to the public hearing by published advertisement, posting of notice on the subject property, and mailed notice to all owners of real property located within 300 feet of the subject property, in accordance with Section 110-5.

(f) Public hearings.

Hearings required under this article shall be conducted in accordance with Section 110-6(c).

(g) Powers and duties.

The HPC has the following powers and duties:

(1) Adopt and amend rules of procedure to the extent such that they are not inconsistent with this Land Development Code, the Comprehensive Plan, or state laws;
(2) Make recommendations to the BOCC on requests to designate historic property, and if necessary, make recommendations to the BOCC on proposed rescission of such designations;
(3) Issue or deny special certificates of appropriateness in accordance with this article;
(4) Entertain appeals of the Planning Director's denial of regular certificates of appropriateness, and report the HPC's findings to the Planning Director for action;
(5) Determine whether a substantially damaged designated historic property may be reconstructed using the criteria set forth in Section 135-5(d);
(6) Advise the Planning Commission and the BOCC on all matters related to historic preservation policy, including the use, administration, and maintenance of publicly-owned designated historic properties;
(7) Recommend land development regulations, comprehensive plan amendments, and municipal code amendments to the Planning Director to assist in the preservation of historic properties;

(8) Make recommendations on nominations of historic property to the National Register of Historic Places;
(9) Recommend to the BOCC financial and technical incentive programs to further the objectives of historic preservation;
(10) Identify historical buildings, sites, structures, objects, and archeological sites in the unincorporated areas of the county which may become part of the Florida Master Site File;
(11) Promote the awareness of historic preservation and its community benefits;
(12) Identify and recommend to the BOCC sources for grant assistance from state, federal, and private sources for the purpose of historic preservation;
(13) Provide an annual report to the BOCC detailing the actions of the HPC during the prior year and the current state of historic preservation in the unincorporated area of the county;
(14) Assist county staff in maintaining county certification from the state historic preservation officer as a certified local government;
(15) Attend pertinent informational or educational meetings, workshops, and conferences;
(16) Seek expertise on matters requiring evaluation by professionals of a discipline not represented; and
(17) Perform any other duty assigned to it by the BOCC.

Sec. 135-4. Criteria for the Designation of Historic Properties.

(a) The HPC may recommend the designation as historic property those buildings, sites, structures, or objects that possess integrity of location, design, setting, materials, workmanship, feeling, and/or association as follows:

(1) Property that is significant in the history of the county, the state, or the United States, or is associated with events that are significant in the history of the county, the state or the United States;
(2) Property that is associated with lives of individuals significant in the past;
(3) Property that embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that represents a significant and distinguishable entity whose components may lack individual distinction; or
(4) Property that has yielded or may be likely to yield information important in prehistory or history.

(b) Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historical buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years, may not be recommended for designation as historic properties by the HPC. However, such properties may be designated if they fall within the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction, or historical importance;
(2) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event;
(3) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;
(4) A cemetery that derives its primary significance from the graves of individuals of transcendent importance, from age, from distinctive design features, or from association with historic events;
(5) A reconstructed building, when done in accordance with this article;
(6) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
(7) A property achieving significance in the past 50 years, if it is of exceptional importance.

Sec. 135-5. Historic Designation Process.

(a) Initiation of historic designation process.

The designation process under this article shall be initiated by the submission of an application requesting historic designation to the Planning and Environmental Resources Department, on a form prescribed by the Planning Director, by either the owner of the proposed historic property or any third party with the concurrence of the owner.

(1) The Planning Director shall have 15 working days to determine if the application is complete. If the Planning Director finds that the application is not complete, he shall serve written notice to the applicant specifying the application's deficiencies. The Planning Director shall take no further action on the application unless the deficiencies are remedied.
(2) If the Planning Director fails to make a determination of completeness within 15 working days, the application is deemed complete. However, it shall be the responsibility of the applicant to ensure any documentation required for designation is provided.
(3) Once the application is deemed complete, the Planning Director shall prepare a designation report with recommendations for submittal to the HPC, and advertise and schedule a public hearing for consideration by the HPC of the requested designation in a manner prescribed by Section 135-3(e) and (f).

(b) Action by the HPC on the proposed designation.

Following the conclusion of the public hearing, the HPC shall render, by written resolution, its decision recommending approval or denial of a proposed historic property designation. The resolution shall include the elements set forth in Section 110-7(b). If the resolution is one

recommending approval of the designation, the resolution shall accurately describe all character-defining elements of the property.

(c) Action by the BOCC.

The BOCC shall hold a public hearing to consider the proposed designation and recommendations of the HPC and the Planning Director, and shall act to designate the property as a historic landmark, or reject the proposed designation by way of resolution. If the resolution designates the property as historic, the property owner shall be furnished a copy of the BOCC resolution by certified mail after its filing by the clerk of the circuit court.

(d) Reconstruction of substantially damaged historic sites.

(1) When a designated historic property has been substantially damaged, the HPC shall determine through an evaluation of architectural integrity, whether the building, structure, object, or site can be reconstructed using the following criteria:

a. Whether there is sufficient evidence such as photo-documentation, measured drawings, or other physical evidence to accurately depict the form and detail of the original resource;
b. Whether the original construction materials, or substitute materials that are sufficiently similar so as to convey the original qualities of construction, are readily available;
c. Whether the interior spaces are especially significant to the form and function of the building. If so, the HPC shall define the parameters necessary to adequately convey those interior spatial characteristics as requirements in the reconstruction effort;
d. Whether the applicant has demonstrated a commitment to the reconstruction effort by making every reasonable effort to preserve or salvage the remaining significant features of the property; and
e. Whether there are other unique factors or circumstances that would make reconstruction desirable.

(2) If the HPC determines that a designated historic property may be reconstructed, the property owner may submit a reconstruction plan for consideration based on the criteria enumerated in subsection (e) of this section. If the property owner chooses not to reconstruct, the HPC may recommend rescission of the historic designation using the procedure stipulated in subsection (f) of this section.

(e) Reconstruction criteria.

Reconstruction of a designated historic property shall be carried out in accordance with the following criteria:

(1) Reconstruction shall be used to depict nonsurviving portions of a property when such reconstruction is essential to the public understanding of the property, and documentary and physical evidence is available to permit accurate reconstruction.
(2) Reconstruction of a building, landscape, structure, or object in its historic location shall be preceded by a thorough archeological investigation identifying and evaluating those features and artifacts, which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.
(3) Reconstruction shall include measures preserving any remaining historic materials, features, and spatial relationships.
(4) Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of the nonsurviving historic property in materials, design, colors, and texture.
(5) All reconstructions shall be clearly documented as being contemporary re-creations.

(f) Amendment or rescission of designation.

A historic designation may only be amended or rescinded by complying with the same procedures as the original approval. However, the Planning Director's report need only contain a recommendation to grant or deny the rescission or amendment, and the reasons therefor.

(1) The HPC resolution recommending rescission of the designation shall be based on competent and substantial evidence supporting the rescission.
(2) Final approval of rescission shall come from the BOCC.
(3) If rescission is the result of a request by the property owner, or the result of the demolition of the historic structure by the property owner, the BOCC may revoke the ad valorem tax exemption as stipulated in Section 135-35.

Sec. 135-6. Certificates of Appropriateness.

(a) Certificate of appropriateness required.

Except as provided herein, a building, moving, or demolition permit, or any other development order, shall not be issued for a designated historic property or property within the Tavernier Historic District Overlay, until a certificate of appropriateness is awarded. A certificate of appropriateness is not required for the issuance of any building permits for interior improvements to a designated historic property or property within the Tavernier Historic District Overlay unless the interior of the property is cited as significant in the property's designation resolution. Within the Tavernier Historic District Overlay, contributing structures, noncontributing structures and new buildings shall require a certificate of appropriateness as if they were a designated historic property, and shall be reviewed by the Planning Director or the HPC, as required, based on the Tavernier Historic District Preservation Guidelines.

(b) Regular certificate of appropriateness.

A regular certificate of appropriateness is required for ordinary repair and maintenance that requires a building permit, except as provided for in subsection (a) of this section. A regular certificate shall be issued for any work that will, to the satisfaction of the Planning Director, not change the appearance of the building, structure, or object. The owner of a designated historic property who desires a regular certificate of appropriateness shall file an application with the Planning and Environmental Resource Department, on a form prescribed by the Planning Director. Upon the receipt of a complete application for a regular certificate of appropriateness, the Planning Director shall approve the application, deny it, approve it with conditions, or pass the application on to the HPC for further review. If the decision is to deny or pass the application to the HPC, the Planning Director shall notify the owner of the decision by certified mail. A denied application shall include an explanatory statement of the Planning Director's basis for his decision. The Planning Director's decision may be appealed pursuant to Section 102-185.

(c) Special certificate of appropriateness.

A special certificate of appropriateness shall be required prior to the issuance of a building permit and shall be issued for any work involving substantial improvement, relocation, new construction, or any work that will result in a change to the original appearance of a designated historic property. The owner of a designated historic property who desires a special certificate of appropriateness shall file an application with the Planning and Environmental Resources Department, on a form prescribed by the Planning Director. The application shall contain the full plans and specifications, a site plan, and if deemed applicable, samples of any materials necessary to fully describe the proposed appearance, colors, texture, materials, and design of the building or structure, any outbuilding, wall, courtyard, fence, unique landscape feature, paving, signage, and exterior lighting. The information shall be adequate to enable the HPC to visualize the effect of the proposed work on the historic property. When the Planning Director determines that the application is complete, he shall schedule and notice the application for a public hearing before the HPC, in accordance with Section 135-3(e). In determining whether to grant or deny the application, or grant it with conditions, the HPC shall evaluate the application according to a set of guidelines based on the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. At the conclusion of the public hearing, the HPC shall, by written resolution, grant, deny, or grant with conditions, the application. The resolution shall contain the elements set forth in Section 110-7(b), together with an explanation of the basis for the HPC's decision. Upon the filing of the resolution with the secretary to the HPC, the secretary shall send a copy of the resolution by certified mail to the applicant.

(d) Demolition.

A special certificate of appropriateness is required before a demolition permit may be issued for the removal of all or a portion of a designated historic property. This subsection shall not apply to a demolition order issued by a governmental agency with jurisdiction to issue such orders, or a demolition order of a court of competent jurisdiction. If the owner of a designated historic property desires to demolish any significant feature, he shall file an application for a special

certificate of appropriateness with the Planning and Environmental Resources Department, on a form prescribed by the Planning Director. The application shall detail the reasons why demolition is necessary and shall provide detailed plans for the reuse of the historic site.

(1) If undue economic hardship is claimed as the basis for demolition, the application shall contain the following information:

a. The amount paid for the property, the date of purchase, and the party from whom it was purchased;
b. The assessed value of the land and improvements thereon according to the two most recent property tax assessments;
c. The amount of real estate taxes assessed for the previous two years;
d. The annual debt service, if any for the previous two years;
e. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
f. All listings of the property for sale or lease, including the price asked and any offers received; and
g. Any profitable adaptive uses for the property that have been considered by the owner.

(2) If undue economic hardship is claimed for income-producing property, the application shall include the following information:

a. The annual gross income from the property for the previous two years;
b. Itemized operating and maintenance expenses for the previous two years; and
c. The annual cash flow, if any, for the previous two years.

(3) When the Planning Director determines that the application is complete, he shall schedule the application for a public hearing before the HPC and cause notice of the public hearing to be given as required by section 135-3(e). In determining whether to grant or deny the application, the HPC shall evaluate the application according to the following standards:

a. Whether the building or structure is of such design, craftsmanship, or materials that it could be reproduced only with great difficulty or expense;
b. Whether the building or structure is one of the last remaining examples of its kind in the neighborhood or county;
c. Whether retention of the building or structure would promote the general welfare of the county by providing an opportunity for the study of local history or prehistory, architecture and design, or by developing an understanding of the importance and value of a particular cultural heritage;
d. Whether there are plans for the reuse of the property if the proposed demolition is carried out, and the effect of those plans on the character of the surrounding area; and

e. Whether the denial of the application will result in an inordinate burden being placed on the owner's use of the property.

(4) At the conclusion of the public hearing, the HPC shall, by written resolution, grant, grant with conditions, or deny the application. The resolution shall contain the elements set forth in Section 110-7(b), together with an explanation of the basis for the HPC's decision. Upon the filing of the resolution with the secretary to the HPC, the secretary shall send a copy of the resolution, by certified mail, to the applicant. If the HPC grants the application for a special certificate for demolition, it may delay the effective date of the certificate for 90 days to allow the HPC to take such steps as it deems necessary to preserve the historic property. Such steps may include, but are not limited to, consultation with civic groups, public agencies, and interested citizens, recommendations for the acquisition of the historic property by public or private bodies or agencies, or moving the building or structure to another location. The delay of the effective date of the resolution shall also extend the 30-day appeal period as provided in Section 102-185 and Chapter 102, Article VI, to 120 days from the filing date of the resolution with the secretary to the HPC.

(e) Archeological landmark.

A special certificate of appropriateness is required before a building permit or other development order may be issued for a designated historic property that contains an archeological landmark or known archeological site. This subsection does not apply to digging or other excavation conducted by entities devoted to scientific and archeological research or education, when conducted solely for the purposes of research and education. An owner of an archeological landmark or known archeological site, who desires to develop it, shall file an application for a special certificate of appropriateness with the Planning and Environmental Resources Department, on a form prescribed by the Planning Director.

(1) The application shall describe in detail the development proposed for the archeological landmark together with a proposed site plan. The application shall also contain the following:

a. A scientific evaluation of the site by an archeologist (including excavation if determined necessary by the archeologist) at the applicant's expense;
b. An archeological survey, conducted by an archeologist, containing an analysis of the impact of the proposed development on the archeological site;
c. A proposal for mitigation measures; and
d. A proposed plan for the protection or preservation of all significant parts of the archeological landmark.

(2) When the Planning Director determines that the application is complete, he shall schedule the application for a public hearing before the HPC and cause notice of the public hearing to be given as required by Section 135-3(e). In determining whether to

grant, deny, or grant with conditions, the application, the HPC shall consider the application according to the following factors.

a. The extent to which the proposed development will alter, disturb, or destroy the archeological landmark;
b. The rarity or significance of the archeological landmark is within the county;
c. Whether mitigation or a redesign of the proposed development will allow the archeological landmark to be preserved intact while allowing the owner a reasonable economic return on his property; and
d. Whether a denial of the application will result in an inordinate burden being placed on the owner's use of his property.

(3) At the conclusion of the hearing, the HPC shall, by written resolution; grant, deny, or grant with conditions, the application. The resolution shall contain the elements set forth in Section 110-7(b), together with an explanation of the HPC's decision. Upon the filing of the resolution with the secretary to the HPC, the secretary shall send a copy of the resolution, by certified mail, to the applicant.

Sec. 135-7. Nonconforming Structures.

(a) Authority to continue.

Nonconforming structures that are designated historic properties shall be permitted to continue in accordance with Section 102-57, except as provided below.

(b) Flood elevation requirements.

Structures that are designated historic properties shall be exempt from FEMA flood elevation requirements in accordance with Section 122-4(b)(7).

(c) Substantial improvements.

A nonconforming structure that is a designated historic property may be substantially improved in accordance with the provisions of Section 135-5(d), and if necessary, Section 102-186(e).

Sec. 135-8. Maintenance of Designated Historic Property.

(a) Nothing in this article shall be construed to prevent the ordinary maintenance, repair, or improvement, which does not involve a change of design, appearance, or material, or prevent ordinary maintenance of landscaping features.

(b) Where the HPC determines that a designated historic property is endangered by lack of maintenance and repair, it shall notify appropriate officials of the county, so that the county may seek correction of such deficiencies under authority of applicable laws and regulations.

(c) In the event the building official determines that any designated historic structure is unsafe, he shall immediately notify the HPC of such findings. Where feasible within applicable laws and regulations, the building official shall endeavor to have the structure repaired rather than demolished and shall take into consideration any comments and recommendations of the HPC. The HPC may take appropriate actions to effect and accomplish preservation of such structure including, but not limited to, negotiations with the owner and other interested parties.

Sec. 135-9. Appeals.

(a) *Authority*. The Division of Administrative Hearing (DOAH) shall have the authority to hear and decide appeals from any decision by the HPC with respect to the provisions of this article and the standards and procedures hereinafter set forth.

(b) *Initiation*. An appeal may be initiated by an owner, applicant, adjacent property owner, any aggrieved or adversely affected person, as defined by F.S. § 163.3215(2), or any resident of real property, from any decision by the HPC with respect to the provisions of this article.

(c) *Procedures*. A notice of appeal in the form prescribed by the Planning Director must be filed with the county administrator and with the Planning and Environmental Resources Department within 30 calendar days of the decision. Failure to file such appeal shall constitute a waiver of any rights under this article to appeal any decision by the HPC with respect to the provisions of this article. Such notice shall be accompanied by the names and addresses of the owner, applicant, property owner, and adjacent property owners. The filing of such notice of appeal will require the HPC to forward to the BOCC any and all records concerning the subject matter of the appeal and to send written notice of the appeal to the owner, applicant, property owner, and adjacent property owners, if different from the person filing the appeal. Upon receipt of the written notice of the appeal, the County shall grant or deny the notice, and if granted, refer to the DOAH with a request that an administrative law judge be assigned to conduct a hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of County action.

(d) *Effect of filing an appeal*. The filing of a notice of appeal shall stay all permit activity and any proceedings in furtherance of the action appealed unless the HPC certifies in writing to the BOCC and the applicant that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further permit activity and any proceedings. The BOCC shall review such certification and grant or deny a stay of the proceedings.

(e) *Action of DOAH*. DOAH shall consider the appeal pursuant to Rule 28-106.201(3) F.A.C.

Sec. 135-10. Assignment of the Planning Director's Duties and Fees.

(a) The BOCC may enter into an agreement with the Historic Florida Keys Foundation (the foundation) assigning to the foundation, some or all of, the duties of the Planning Director under this article.

(b) The BOCC may, by resolution, establish a schedule of fees for the applications and appeals provided for in this article.

Secs. 135-11—135-30. Reserved.

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ARTICLE II. AD VALOREM TAX EXEMPTION FOR IMPROVEMENTS TO HISTORIC PROPERTIES

Sec. 135-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Division means the Division of Historical Resources of the Florida Department of State.

Foundation means the Historic Florida Keys Foundation.

Historic property means a building, site, structure or object that is designated as an archeological, historical or cultural landmark under Article I of this chapter.

Improvements mean changes in the condition of real property brought about by the expenditure of labor or money for the restoration, renovation or rehabilitation of historic properties. Improvements include additions and accessory structures (e.g., a garage) necessary for efficient contemporary use.

Renovation or *rehabilitation*, for historic properties, or the portion of those properties that have historical or cultural significance, means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, cultural and archeological values. For historic properties, or the historic portions of such properties that are of archeological significance or that are severely deteriorated, renovation or rehabilitation means the act or process of applying measures designed to sustain and protect the existing form and integrity of a property, or re-establish the stability of an unsafe or deteriorated property while maintaining the essential form of the property as it presently exists.

Restoration means the act or process of accurately recovering the form and details of a historic property and setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Sec. 135-32. Ad Valorem Tax Exemption Authorized for Improvements to Historic Properties.

The BOCC may grant an ad valorem tax exemption of 100 percent of the assessed value of all improvements that result from the restoration, renovation, or rehabilitation of such properties, after the board's receipt of a recommendation from the division as provided elsewhere in this article. The exemption only applies to real property and only to taxes levied by the BOCC. The exemption does not apply to any taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to Section 9(b) or Section 12, Article VII, Fla. Const. In order for

the improvements to historic property to qualify for the ad valorem tax exemption, the improvements must have been made on or after the effective date of the ordinance from which this article is derived. All exemptions granted under this article will be for a term of ten years.

Sec. 135-33. Properties Eligible for the Ad Valorem Tax Exemption; Procedure for Obtaining the Exemption.

(a) Only property described as historic property in Section 135-31 and located within the unincorporated county is eligible for an application for the ad valorem tax exemption authorized by Section 135-32.

(b) The division is hereby designated as the representative of the BOCC for reviewing applications for the tax exemption authorized by Section 135-32. The foundation is hereby designed as the representative of the BOCC for receiving tax exemption applications and forwarding those applications to the division. The foundation is also designated as the representative of the BOCC for the purpose of receiving division recommendations and forwarding those recommendations to the BOCC. All applications for ad valorem tax exemptions submitted to the foundation pursuant to this article must be accompanied by a $100.00 application fee payable to foundation to cover the costs of review and assistance to the applicant. The BOCC reserves the right to monitor the use of the application fees received by the foundation in order to ensure that those funds are used for the purpose authorized by this article.

(c) The standards for the review, recommendation, and approval or denial of ad valorem tax exemption applications are set forth in F.A.C. 1A-38.003—1A-38.005. Those rules are hereby incorporated into this article by reference.

(d) Any person that desires an ad valorem tax exemption for improvements to historic properties must, before commencing construction, file with the foundation the preconstruction portion of the division's two-part Historic Preservation Property Tax Exemption Application (DOS Form No. HR3E101292 or any substitute form designated by the division). Once the foundation staff determines that the preconstruction application is complete, the staff must promptly forward the application to the division for review and comment. If determined to be incomplete, the application must be returned to the applicant for correction. However, if an applicant requests that his application be forwarded to the division, although the foundation staff determined that the application is incomplete, then the staff must forward the application to the division along with a memorandum that notes the deficiencies determined by the staff.

(e) Once the division receives a preconstruction application from the foundation staff, the division must review the application pursuant to the procedures and standards set forth in F.A.C. 1A-38.003—1A-38.005. Written copies of the division's recommendations must be sent to the applicant and the foundation. If the division's recommendation finds that the proposed work is inconsistent with the standards of F.A.C. 1A-38.005, then the foundation

staff is directed to assist the applicant in making any of the recommended corrections to the proposed work recommended but only to the extent that the foundation staff is professionally qualified to do so. Failure of the applicant to correct the planned work, as recommended by the division, may result in the denial of the ad valorem tax exemption by the BOCC when the work is finally completed.

(f) When the applicant has completed the work, the applicant must file with the foundation the request for review of completed work (request for review) portion of DOS form described in subsection (d) of this section, together with any supporting materials required by the division. If the foundation staff determines that the request for review is complete, then the staff must promptly forward it to the division for review and recommendation. If the request for review is determined to be incomplete by the foundation staff, then it must be returned to the applicant for correction. However, if an applicant requests that his application be forwarded to the division, although the foundation staff determined that the request for review is incomplete, then the staff must forward the request to the division along with a memorandum that notes the deficiencies determined by staff.

(g) When the division receives a request for review, the division must review the request pursuant to the procedures and standards set forth in F.A.C. 1A-38.003—1A-38.005. On completion of its review of a request for review of completed work, the division must recommend to the BOCC that they grant or deny the ad valorem tax exemption. The recommendation, and the reasons therefore, must be provided in writing by the division to the applicant and the foundation. A recommendation to grant the exemption constitutes certification by the division that the property for which the exemption is sought meets the requirements of F.A.C. 1A-38.003—1A-38.005, F.S. § 196.1997(11)(a), and this article. Upon receipt of the division's recommendation, the foundation staff must forward the recommendation, together with the entire application, to the county administrator's office for placement on the public hearing agenda of the BOCC. If the division's recommendation is to deny the ad valorem tax exemption, and the applicant timely elects to pursue F.S. Chapter 120, administrative appeal of that recommendation, then the BOCC may not take any action on the recommendation until the final resolution of the appeal.

(h) At the scheduled public hearing, a majority vote of the BOCC may, by written resolution, grant or deny the application for an exemption from ad valorem taxes authorized by Section 135-32. If granted, the resolution must contain the following:

(1) The name of the owner, the address of the historic property and the legal description of the property, for which the exemption is granted;
(2) The effective date of the ten-year exemption; and
(3) A finding that the exemption meets the requirements of F.S. § 196.1997, F.A.C. 1A-38.003—1A-38.005, and this article.

If denied, the written resolution must state the reasons for the denial.

(i) Before the effective date of the exemption, and as a condition precedent to the exemption taking effect, the owner of property must execute the historic preservation property tax exemption covenant and record the covenant with the deed for the property in the official records of the county. The historic preservation property tax exemption covenant is incorporated into this article by reference.

Sec. 135-34. Additional Ad Valorem Tax Exemptions for Properties Open to the Public.

If an improvement qualifies as a historic property for an ad valorem exemption under Section 135-32, the property is used for nonprofit or governmental purposes as set forth in F.A.C. 1A-38004(4), and the property is regularly and frequently open for the public's visitation, use, and benefit as set forth in F.A.C. 1A-38.004(5), then the BOCC is authorized to grant an exemption from ad valorem taxation of up to 100 percent of the assessed value of the property, as improved, if all the other applicable provisions of Sections 135-32 and 135-33 are complied with; provided, however, the assessed value of the improvements must be equal to at least 50 percent of the total assessed value of the property as improved. The exemption provided for in this section applies only to real property to which improvements are made by or for the use of the existing owner. In order for the property to qualify for the exemption provided for in this section, any such improvements must be made on or after the effective date of the ordinance from which this article is derived.

Sec. 135-35. Loss of Exemption.

(a) The BOCC may revoke an ad valorem tax exemption granted pursuant to this article if:

(1) The owner is in violation of the historic preservation tax exemption covenant;
(2) The property has been damaged by accident or natural causes to the extent that the historic integrity of the features, materials, appearance, workmanship and environment, or archaeological integrity that made the property eligible for designation under Article I of this chapter, have been lost or so damaged that restoration is not feasible; or
(3) In the case of an exemption granted pursuant to Section 135-34, the property is sold or otherwise transferred from the owner who made the application and was granted the exemption or the property no longer meets the requirements set forth in Section 135-34 and F.A.C. 1A-38.004(4) and (5).

(b) If the County Administrator determines that an event described in subsection (a)(1), (a)(2) or (a)(3) of this section has occurred, he must schedule a public hearing before the BOCC requesting that the board revoke the ad valorem tax exemption. The administrator must furnish the property owner with a written notice of the hearing, stating the time, date and place of the hearing, together with a written summary of the reason that the revocation is being requested, and a statement that the owner will have an opportunity to be heard and to present witnesses or offer other evidence as to why the exemption should not be revoked. The hearing before the BOCC may be informally conducted. At the hearing, the county

administrator (or designee) and the property owner (or designee) may present witnesses or other evidence they believe is relevant. Although the formal rules of evidence will not apply, the mayor may reject proffered testimony or evidence that is irrelevant or repetitive. Following the hearing, the BOCC may, by majority vote, revoke the exemption, in which case the exemption shall no longer be in effect, or the board may determine that the events described in subsection (a)(1), (a)(2) or (a)(3) of this section did not occur or, if they did occur, were insufficient to justify revoking the exemption, in which case the exemption will remain in effect. All determinations made by the BOCC pursuant to this section must be memorialized in a written resolution.

Sec. 135-36. Ad Valorem Tax Exemption Resolutions to be Furnished to the Property Appraiser.

The clerk, on behalf of the BOCC, must deliver a certified copy of each resolution granting or revoking a historic preservation ad valorem tax exemption to the property appraiser. Upon certification of the assessment roll, or recertification, if applicable pursuant to F.S. § 193.122, for each fiscal year for which this article is in effect, the property appraiser, must report the following information to the BOCC:

(1) The total taxable value of all property within the county for the current fiscal year; and

(2) The total exempted value of all property within the county that has been approved to receive historic preservation ad valorem exemption for the current fiscal year.

Sec. 135-37. Article Nonexclusive.

This article authorizes ad valorem tax exemptions for improvements to historic property and a procedure for the BOCC to grant such exemptions. This article does not supersede, or in any way excuse compliance with, any county ordinance regulating the use of land or the construction, repair or renovation, of buildings, or other structures.

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Chapter 138 RATE OF GROWTH RESTRICTIONS (ROGO/NROGO)

ARTICLE I. IN GENERAL

Secs. 138-1—138-18. Reserved.

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ARTICLE II. RESIDENTIAL RATE OF GROWTH LIMITATIONS (ROGO)

Sec. 138-19. Residential Rate of Growth Ordinance (ROGO).

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

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

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

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

Buildable lot or parcel, for the purposes of this chapter, means a lot or parcel which must contain a minimum of 2,000 square feet of upland, including any disturbed wetlands that can be filled.

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

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

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

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

Residential dwelling unit (*dwelling unit*) means a dwelling unit as defined in Section 101-1, and expressly includes the following other terms also specifically defined in Section 101-1: rooms, hotel or motel; campground spaces; mobile homes; transient units; and institutional residential units (except hospital rooms).

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

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

ROGO application means the residential ROGO application submitted by applicants seeking allocation awards.

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

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

Sec. 138-20. General Provisions.

(a) *Residential ROGO allocation award required*. No building permit shall be issued for a new dwelling unless the dwelling unit has received a residential dwelling unit allocation award, or is determined to be exempt as provided below.

(b) *Yearly review and monitoring*. As required by the Comprehensive Plan, as requested by the Planning Commission or the BOCC, or as otherwise necessary, the Planning Director shall consider the rate, amount, location, and ratio of market rate to affordable housing residential dwelling units available for development in the County. The Planning Director shall also monitor the effects of such development and determine the conformity of such development with the Comprehensive Plan and this Chapter. This review, in whole or in part, may form the basis for recommendations by the Planning Director or the Planning Commission to the BOCC for action to repeal, amend or modify the ROGO allocation system.

(c) *Applicability*. The ROGO allocation system shall apply within the unincorporated area of the county outside of the county mainland, and such area, for purposes hereof, has been divided into subareas as follows:

(1) Upper Keys: the unincorporated area of the county north of Tavernier Creek and corporate limits of the Village of Islamorada (approximately mile marker 90).
(2) Lower Keys: the unincorporated area of the county from the corporate limits of the Village of Islamorada (approximately mile marker 72) south to the corporate limits of

the City of Key West at Cow Key Bridge on U.S. Highway 1 (approximately mile marker 4), excluding Big Pine Key and No Name Key.

(3) Big Pine Key and No Name Key: the islands of Big Pine Key and No Name Key within unincorporated the county.

Sec. 138-21. Type of Development Affected.

The residential ROGO shall apply to all residential dwelling units, including institutional residential uses, such as nursing homes and rehabilitation centers, for which a building permit is required and for which building permits have not been issued prior to July 13, 1992, except as otherwise provided herein.

Sec. 138-22. Type of Development Not Affected.

The residential ROGO shall not apply to the development described below:

(a) *Redevelopment on-site*. Redevelopment, rehabilitation or replacement of any lawfully established dwelling unit or space that does not increase the number of dwelling units above that which existed on the site prior to the redevelopment, rehabilitation or replacement shall be exempt from the residential ROGO system.

The Planning Director shall review available documents to determine if a body of evidence exists to support the lawful existence of units on or about July 13, 1992, the effective date of the original ROGO. Such evidence shall be documented and submitted to the Planning Director on a form provided by the Planning and Environmental Resources Department. Any issued Monroe County building permit(s) for the original construction of the structure confirming the existence of the dwelling unit and its use(s) on or about July 13, 1992 can stand as the only piece of evidence for a ROGO exemption.

If there are no building permit(s) for the original construction of the structure which confirm the lawful existence of the dwelling unit and its use(s) on or about July 13, 1992, the application shall include, at a minimum, at least two of the following documents:

(1) Any other issued Monroe County building permit(s) supporting the existence of the structure(s) and its use(s) on or about July 13, 1992;
(2) Documentation from the Monroe County Property Appraiser's Office indicating residential use on or about July 13, 1992;
(3) Aerial photographs (to confirm the number of structures, not the number or type of dwelling units) and original dated photographs showing the structure(s) existed on or about July 13, 1992;
(4) Residential county directory entries on or about July 13, 1992;
(5) Rental, occupancy or lease records, on or about July 13, 1992, indicating the number, type and term of the rental or occupancy;
(6) State and/or county licenses, on or about July 13, 1992, indicating the number and types of rental units;

(7) Documentation from the utility providers indicating the type of service (commercial or residential) provided and the number of meters in existence on or about July 13, 1992; and

(8) Similar supporting documentation not listed above as determined suitable by the Planning Director.

Any dwelling unit established after the effective date of the original ROGO should be documented through the ROGO permit allocation system and dwelling units that received such allocations that were constructed and received certificates of occupancies may be established as exempt from ROGO through verification of the certificate of occupancy alone.

Provision of affidavits to support the existence of a dwelling unit(s) is allowed, but cannot be the sole record upon which a decision is based.

Provision of documents is the responsibility of the applicant.

Dwelling units determined to be exempt from the ROGO per this subsection that have not been previously acknowledged by the Planning Director may also be nonconformities, pursuant to Chapter 102, Article III Nonconformities. Such occasions shall require a determination by the Planning Director as to the lawfulness of the nonconformity.

(b) *Transfer off-site.* Residential dwelling units and transient units may be transferred to another site in the same ROGO subarea, provided that the units lawfully exist and can be accounted for in the County's hurricane evacuation model.

(1) ROGO exemptions may be transferred as follows:

a. between sites within the Upper Keys ROGO subarea;
b. between sites within the Lower Keys ROGO subarea;
c. between sites within the Big Pine Key and No Name Key ROGO subarea;
d. from the Big Pine Key and No Name Key ROGO subarea to the Lower Keys ROGO subarea.

(2) No sender units may be transferred to an area where there are inadequate facilities and services.

(3) Transfer off-site shall consist of either the demolition of a dwelling unit on a sender site or a change of use of the floor area of dwelling unit on a sender site to another permitted use in the applicable land use (zoning) district that does not require the ROGO exemption and the development of a new dwelling unit, transient unit or affordable housing unit on a receiver site.

(4) Transfer of Lawfully Established Unit Types:

a. Transfer of a transient unit. A lawfully established hotel room, motel room, campground space, or recreational vehicle space may be transferred off-site to another hotel, motel, campground or recreational vehicle park.
b. Transfer of an affordable housing unit. A lawfully established permanent market rate or affordable dwelling unit may be transferred to affordable housing. The receiver site shall be developed with an affordable housing unit pursuant to Sections 101-1 and 139-1.
c. Transfer of a market rate unit. A lawfully established permanent market rate dwelling unit may be transferred to a receiver site and developed as a market unit, provided that one of the following is satisfied:

1. A 99 year deed-restricted affordable housing unit, pursuant to Sections 101-1 and 139-1, is retained or redeveloped on the sender site. If the existing dwelling unit is proposed as the deed-restricted affordable housing unit, the unit shall pass a life safety inspection conducted in a manner prescribed by the Monroe County Building Department, comply with hurricane standards established by the Florida Building Code, and habitability standards established under the Florida Landlord and Tenant Act; or
2. The sender site is dedicated to Monroe County for the development of affordable housing and an in-lieu fee per unit, based on the current maximum sales price for a one-bedroom affordable unit as established under Section 139-1(a), is paid to the affordable housing trust fund; or
3. A 99 year deed-restricted affordable housing unit, pursuant to Sections 101-1 and 139-1, is developed on a Tier III property (single-family residential lots or parcels) and the dwelling unit on the sender site is demolished and the sender site is restored.

(5) Sender Site Criteria:

a. Contains a documented lawfully-established sender dwelling unit pursuant to subsection (a) and recognized by the County; and
b. Located in a Tier I, II, III-A, or III designated area; including any tier within the County's Military Installation Area of Impact (MIAI) Overlay.

(6) Receiver Site Criteria:

a. The Future Land Use category and Land Use (Zoning) District must allow the requested use;
b. Must meet the adopted density standards;
c. Includes all infrastructure (potable water, adequate wastewater treatment and disposal wastewater meeting adopted LOS, paved roads, etc.);
d. Located within a Tier III designated area; and
e. Structures are not located in a velocity (V) zone or within a CBRS unit.

(c) *Procedures for transfer off-site.*

(1) A pre-application conference and, at a minimum, a minor conditional use permit approval shall be required for both the sender site and the receiver site. The minor conditional use for the transfer shall be reviewed pursuant to standards in this subsection (2) and not the standards provided in Section 110-67. As part of the minor conditional use permit approval process, mailing of notice shall be required to owners of real property located within 600 feet of the receiver site and owners of real property located within 600 feet of the sender site. The receiver shall be posted in accordance with Sections 110-5(h) and 110-69. Posting of notice, as required in Section 110-5(c) shall be required for the receiver site, but not the sender site.

(2) A sender unit shall be assigned a unique identifier number that shall be used for tracking and monitoring by the Planning and Environmental Resources Department. Multiple units to be transferred from a sender site to a single receiver site may be authorized under a single minor conditional use permit approval. The unique identifier number shall be itemized in the minor conditional use permit development orders and building permits required for both the sender and receiver sites.

(d) *Conditions for issuance of permit.* No building permit shall be issued for the new dwelling unit, transient unit or affordable housing unit on the receiver site until one of the following conditions is met:

(1) The dwelling unit to be transferred is demolished as per an issued demolition permit and a final inspection of the demolished or removed dwelling unit or space has been completed and approved by all necessary county staff;
(2) The structure in which the dwelling unit to be transferred is located is converted to another permitted use as per an issued building permit and a final certificate of occupancy for the conversion has been issued; or
(3) Restoration of the sender site consistent with an approved restoration/re-vegetation plan.

(e) *Nonresidential use*. Nonresidential uses are not affected by residential ROGO.

(f) *Development not increasing hurricane evacuation times.* Any applicant that can demonstrate with a traffic study acceptable to county traffic engineers that the proposed development will not increase hurricane evacuation times. All dwelling units to be located in the Ocean Reef master planned community are deemed not to increase hurricane evacuation times.

(g) *Public/governmental uses.* Public/governmental uses, including capital improvements and public buildings, as are defined in Section 101-1 shall be exempt from the residential ROGO system.

(h) *Other nonresidential development*. Any other use, development, project, structure, building, fence, sign or activity, which does not result in a new dwelling unit shall be exempt from the residential ROGO system.

(i) *Vested rights*. Landowners with a valid, unexpired development of regional impact approval granted by the county prior to July 13, 1992, shall be exempt from the residential ROGO system.

(j) *Temporary emergency housing.* Temporary emergency housing shall be exempt from the residential ROGO system pursuant to Section 103-3.

Sec. 138-23. Moratorium on New Transient Units.

New transient residential units, such as hotel or motel rooms, or campground, recreational vehicle or travel trailer spaces, shall not be eligible for residential ROGO allocations until May 1, 2022.

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:

Subarea	*Number of Dwelling Units*
Upper Keys	61
Lower Keys	57
Big Pine and No Name Keys	8
Total market rate	126
Affordable dwelling units	
Very Low, Low, and Median Incomes	360*
Moderate Income	350*
*Includes one annually for Big Pine Key and No Name Key.	

ROGO Year	Annual Allocation	
	Market Rate	**Affordable Housing**
July 13, 2013- July 12, 2014	126 U: 61, L: 57, BPK/NNK: 8	71
July 13, 2014- July 12, 2015	126 U: 61, L: 57, BPK/NNK: 8	71
July 13, 2015- July 12, 2016	126 U: 61, L: 57, BPK/NNK: 8	71
July 13, 2016- July 12, 2017	126 U: 61, L: 57, BPK/NNK: 8	497 total AFH (total available immediately)
July 13, 2017- July 12, 2018	126 U: 61, L: 57, BPK/NNK: 8	
July 13, 2018- July 12, 2019	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	126 U: 61, L: 57, BPK/NNK: 8	
July 13, 2021- July 12, 2022	126 U: 61, L: 57, BPK/NNK: 8	
July 13, 2022- July 12, 2023	126 U: 61, L: 57, BPK/NNK: 8	
TOTAL	1,260	710*
*(includes two annual affordable ROGO allocations for the Big Pine Key/No Name Key subarea)		

The State of Florida, pursuant to Administration Commission Rules, may modify the annual allocation rate. By July 12, 2018, 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 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.

(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, the BOCC may reserve by resolution some or all of the available affordable housing 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.

(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.

(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.

Sec. 138-25. Application Procedures for Residential ROGO.

(a) *Deadlines for submission of building permit applications to be entered into the residential permit allocation system.* No approved building permit application requiring a ROGO allocation award, including applications submitted under privatized plan review as provided for by Chapter 553, F.S., shall be accepted for the entry into the ROGO system under this chapter, unless the building permit application is submitted to the Building Department at least 30 days prior to the end of the allocation period appropriate for the application. A submission 30 days prior does not guarantee that it will be eligible to enter ROGO that quarter if it has not passed all required reviews.

(b) *Application for allocation.* In each quarterly allocation period, the Planning and Environmental Resources Department shall accept applications to enter the residential ROGO system. Except for allocations to be reserved and awarded under Section 138-24(b), the ROGO application must be accompanied by an approved building permit application in order to be considered in the current allocation period. The Planning Director, or his or her designee, shall review the ROGO application for completeness. If the application is

determined to be incomplete, the Planning Director, or his or her designee, shall reject the ROGO application and provide a written notice to the applicant specifying the application's deficiencies and the reasons therefore, within fifteen (15) working days. The Planning Director or his or her designee shall take no further action on the application unless the deficiencies are remedied. The application shall be assigned a controlling date that reflects the time and date of its submittal unless the application is determined to be incomplete. If the application is rejected, then the new controlling date shall be assigned when a complete application is submitted.

(c) *Application requirements*. The ROGO application shall be submitted in a form provided by the Planning and Environmental Resources Department and meet the following requirements:

(1) The application shall include a) the name and address of the property owner(s) of record and any authorized agents, to which certified notice of an allocation award will be mailed, if awarded, b) the property record card(s) from the Monroe County Property Appraiser, c) a written legal description of the property proposed for development, d) a boundary survey of the property proposed for development, prepared by a surveyor registered in the State of Florida, showing the boundaries of the site, elevations, bodies of water and wetlands on the site and adjacent to the site, existing structures including all impervious areas, existing easements, total acreage, and total acreage by habitat and e) a site plan. The boundary survey and site plan may be filed with the corresponding building permit application. Additional copies of the boundary survey and site plan are not required to be filed with the ROGO application.

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

(3) The site plan shall be prepared and sealed by a professional architect, engineer, or any other professional licensed to prepare a site plan. The site plan shall be drawn to a scale of one inch equals ten feet or one inch equals 20 feet. At a minimum, the site plan shall depict the following features and information:

a. Date, north point and graphic scale;
b. Boundary lines of site, including all property lines and mean high-water lines shown in accordance with Florida Statutes;
c. All attributes from the boundary survey;
d. Future Land Use Map (FLUM) designation(s) of the site;
e. Land Use (Zoning) District designation(s) of site;
f. Tier designation(s) of the site;
g. Flood zones pursuant to the Flood Insurance Rate Map;
h. Setback lines as required by this Land Development Code;
i. Locations and dimensions of all existing and proposed structures, including all paved areas and clear site triangles;

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

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

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

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

n. Location of fire hydrants or fire wells;

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

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

(d) *Fee for review of application.* Each ROGO application shall be accompanied by a nonrefundable processing fee established by resolution of the BOCC. Additional fees are not required for successive review of the same ROGO application unless the application is withdrawn and resubmitted.

(e) *Compliance with other requirements.* The ROGO application shall not constitute an indication of whether or not the applicant for a residential ROGO allocation has satisfied and complied with all county, state and federal requirements otherwise imposed by the County regarding conditions precedent to issuance of a building permit.

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

(g) *Limitation on number of applications.*

(1) An individual entity or organization may submit only one (1) ROGO application per dwelling unit in each quarterly allocation period.
(2) There shall be no limit on the number of separate parcels for which ROGO applications may be submitted by an individual, entity or organization.
(3) A ROGO application for a given parcel shall not be for more dwelling units than are permitted by applicable zoning or land use regulations or the Comprehensive Plan.

(h) *Expiration of allocation award.* Except as provided for in this article, an allocation award shall expire when its corresponding building permit is not picked up after 60 days of notification by certified mail of the award, or, after issuance of the building permit, upon expiration of the permit or after failure of the applicant to submit required plan revisions by the required date set forth in subsection (k) or after the failure to conclude the required coordination with FWS under the Permit Referral Process in Section 122-8(d)(5).

(i) *Revisions of ROGO applications and awards.*

(1) An applicant may elect to revise a ROGO application to increase the competitive points in the application without prejudice or change in the controlling date if a revision is submitted on a form approved by the Planning Director to the Planning and Environmental Resources Department no later than 30 days following the Planning Commission approval of the previous ROGO rankings. Any such revision shall not involve changes to the approved building permit application. All other applications that are withdrawn and resubmitted that do not increase the competitive points or involve revisions to the approved building permit application shall be considered new, requiring payment of appropriate fees and receiving a new controlling date.
(2) After receipt of an allocation award, and either before or after receipt of a building permit, but prior to receipt of a certificate of occupancy, no revisions shall be made to any aspect of the proposed residential development which formed the basis for the evaluation review, determination of points and allocation rankings, unless such revision would have the effect of increasing the points awarded, without the removal of any lot aggregation or land dedication or removal of an affordable housing deed restriction or density reduction restrictive covenant.

(j) *Clarification of application data.*

(1) At any time during the residential ROGO allocation review and approval process, the applicant may be requested by the Planning Director or the Planning Commission to submit additional information to clarify the relationship of the allocation application, or any elements thereof, to the evaluation criteria. If such a request is made, the Planning Director shall identify the specific evaluation criterion at issue and the specific information needed and shall communicate such request to the applicant.
(2) Upon receiving a request from the Planning Director for such additional information, the applicant may provide such information, or the applicant may decline to provide such information and allow the allocation application to be evaluated as submitted.

(k) *Revisions of building permit applications requiring the ROGO allocation(s).* A building permit application for a proposed dwelling unit requiring a ROGO allocation must be approved prior to submitting a ROGO application. In the event that the Florida Building Code is amended between the date that a ROGO application is submitted and the date on which a building permit, requiring the ROGO allocation(s) applied for, is issued (which follows the date on which the required allocation(s) is awarded), if necessary, the applicant shall submit plan revisions to the building permit application demonstrating full compliance with the current Florida Building Code in effect. These plan revisions shall be submitted within 180 days of the ROGO allocation award date or the applicant shall forfeit the ROGO allocation award. Following receipt of the plan revisions, the Building Department shall review the revisions as if the application is new (however retaining the same building permit number for administrative purposes), based on the building code, for compliance prior to issuance of the building permit requiring the ROGO allocation(s) by the Building Official. Such mandatory revisions and review are limited to the modifications necessary to demonstrate compliance with the Florida Building Code in effect at the time of building permit issuance. This is not applicable to the Land Development Code.

Sec. 138-26. Evaluation Procedures for Dwelling Unit Allocation.

(a) *Adjustment of residential ROGO allocations*. At the end of each quarterly allocation period, the Planning Director shall recommend additions or subtractions to the basic allocation available by subarea, based upon any of the following, as appropriate:

(1) The number of building permits for new residential units issued which expired.
(2) The number of dwelling unit allocation awards that expired prior to issuance of a corresponding building permit and which were awarded in the current annual allocation period;
(3) The number of residential ROGO allocation awards available which were not allocated during the quarterly allocation period in the current annual allocation period;
(4) The number of residential ROGO allocation awards in previous quarters which were borrowed from future allocations to accommodate multiple unit projects or to accommodate allocation applications with identical scores, pursuant to Section 138-26(b)(2), or which were granted to applicants via either the appeals process, administrative relief or a beneficial use determination;
(5) Residential ROGO allocations vested during the preceding quarter;
(6) Any other modifications required or provided for by the Comprehensive Plan or an agreement pursuant to F.S. Chapter 380;
(7) The receipt or transfer of affordable housing allocations from or to municipalities pursuant to this article;
(8) Allocations reserved and/or awarded by the BOCC pursuant to Section 138-24(c).

(b) *Initial evaluation of allocation applications*. Upon receipt of completed allocation applications, the Planning Director shall evaluate the allocation applications for market rate housing pursuant to the evaluation criteria set forth in Section 138-28.

(1) Except for affordable housing, the Planning Director shall classify each allocation application by subarea.

(2) On the evaluation cover page, for each allocation application, the Planning Director shall indicate the subarea and the number of dwelling units for which allocation awards are being requested. Market rate allocation applications shall be aggregated by subarea. Affordable housing allocation applications shall be aggregated on a countywide basis, except for the Big Pine Key/No Name Key subarea.

(3) Within 30 days of the conclusion of a quarterly allocation period, unless otherwise extended by the BOCC, the Planning Director shall, for market rate allocations:

a. Complete the evaluation of all allocation applications submitted during the relevant allocation period;
b. Total the number of dwelling units by subarea for which allocation applications have been received; and
c. Rank the allocation applications in descending order from the highest evaluation point total to the lowest and by controlling date, pursuant to subsection (e).

(4) Within 30 days of the conclusion of a quarterly allocation period, unless otherwise extended by the BOCC, the Planning Director shall, for affordable housing allocations:

a. Complete review of all allocation applications to confirm eligibility of applicants during the relevant allocation period;
b. Total the number of dwelling units for the unincorporated county for which affordable housing allocation applications have been received; and
c. List the affordable housing allocation applications in descending order of controlling date from earliest to latest date.

(5) If the number of dwelling units represented by the allocation applications for market rate housing, by subarea, is equal to or less than the quarterly allocation, the Planning Director may make a recommendation to the Planning Commission that all of the allocation applications for that subarea be granted allocation awards.

(6) If the number of dwelling units represented by the allocation applications for affordable housing is equal to or less than the available allocation, the Planning Director may make a recommendation to the Planning Commission that all of the allocation applications be granted allocation awards.

(7) If the number of dwelling units represented by the allocation applications for market rate housing, by subarea, is greater than the quarterly allocation, the Planning Director shall submit an evaluation report to the Planning Commission indicating the evaluation rankings and identifying those allocation applications whose ranking puts them within the quarterly allocation, and those allocation applications whose ranking puts them outside of the quarterly allocation.

(8) If the number of dwelling units represented by the allocation applications for affordable housing is greater than the total available allocation, the Planning Director shall submit a report to the Planning Commission indicating the applications in order of their control dates and identifying those allocation applications for which sufficient allocations exist and those allocation applications whose ranking by controlling date puts them outside the available allocation.

(c) *Public hearings.* Upon completion of the evaluation ranking report and/or recommendation, the Planning Director shall schedule and notice a public hearing by the Planning Commission pursuant to otherwise applicable regulations.

(1) At or prior to the public hearing, the Planning Commission may request, and the Planning Director shall supply, copies of the allocation applications and the Planning Director evaluation worksheets.

(2) Upon review of the market rate allocation applications and evaluation worksheets, the Planning Commission may adjust the points awarded for meeting a particular criteria, adjust the rankings as a result of changes in points awarded, or make such other changes as may be appropriate and justified.

(3) The basis for any Planning Commission changes in the scoring or ranking of market rate applications shall be specified in the form of a motion to adopt the allocation rankings and may include the following:

a. An error in the designation of the applicable subarea.
b. A mistake in the calculation of dedicated or aggregated lots/land.
c. A mistake in assignment of the tier map designation in the application. Such a mistake in reading the tier designation in applying points for the application, any change to the tier map must go through the procedures for amendment of the tier map.
d. Any other administrative error or omission that may cause the application to be incorrectly scored.

(4) The public, including, but not limited to, applicants for allocation awards, shall be permitted to testify at the public hearing. Applicants may offer testimony about their applications or other applications; however, in no event may an applicant offer modifications to an application that could change the points awarded or the ranking of the application.

(5) At the conclusion of the public hearing, the Planning Commission may:

a. Move to accept the evaluation rankings for market rate housing applications and rankings for affordable housing applications as submitted by the Planning Director.
b. Move to accept the rankings as may be modified as a result of the public hearing.
c. Move to continue the public hearing to take additional public testimony.

d. Move to close the public hearing but to defer action on the evaluation rankings pending receipt of additional information.
e. Move to reject the rankings.

(6) The Planning Commission shall finalize the rankings within 60 days following initial receipt of the Planning Director evaluation ranking, report and recommendations.

(d) *Notification to applicants.* Upon finalization of the evaluation rankings by the Planning Commission, notice of the rankings, by subarea for market rate housing, and countywide for affordable housing, shall be posted at the Planning and Environmental Resources Department offices and at such other places as may be designated by the Planning Commission.

(1) Applicants who receive allocation awards shall be further notified by certified mail, return receipt requested. After three (3) unsuccessful attempts to notify the applicant via certified mail, return receipt requested, the allocation award shall expire. Except as provided herein for allocations for affordable housing awarded by the BOCC pursuant to Section 138-24(b) and subsection (f) of this section, upon receipt of notification of an allocation award, the applicant may request issuance of a building permit for the applicable dwelling unit.
(2) Applicants who fail to receive allocation awards shall be further notified by regular mail; without further action by such applicants or the payment of any additional fee, such applications shall remain in the residential ROGO system for reconsideration in the next succeeding quarterly allocation period.

(e) *Identical rankings for market rate housing applications.* If two or more allocation applications in a given subarea have identical evaluation points, these applications shall be ranked in descending order from the earliest controlling date of submission to the latest. The Planning Commission may approve two or more allocation applications with identical rankings and controlling dates despite the fact that the quarterly allocation will be exceeded if:

(1) A clear statement of findings of fact are made justifying the decision; and
(2) The excess allocation is reduced from the next succeeding quarterly allocation period or is reduced pro rata from the next three quarterly allocation periods.

(f) *Extension of expiration period for Affordable Housing.* Upon the written approval of the Planning Director, the expiration period for an allocation award for affordable multi-unit housing projects may be extended where the applicant is unable to be granted a sufficient number of allocations required to initiate the project. As may be required time to time, the BOCC may extend the 60-day expiration period for an allocation award by resolution upon finding that such extension is in the public interest.

Sec. 138-27. Administrative Relief.

(a) *Eligibility*. An applicant for an allocation award is eligible for administrative relief if:

(1) The application complies with all requirements of the dwelling unit allocation system;
(2) The application has been denied an allocation award for four successive years (first 16 consecutive quarterly allocation periods) in the ROGO Permit Allocation System;
(3) The proposed development otherwise meets all applicable county, state, and federal regulations;
(4) The ROGO allocation application has not been withdrawn;
(5) The applicant has complied with all the requirements of the ROGO Permit Allocation System; and
(6) The applicant has followed the procedures for administrative relief; and
(7) The applicant has not received an allocation award.

(b) *Notification of eligibility*. Within 30 days of the finalization of evaluation rankings by the Planning Commission, any applicant determined to be eligible for administrative relief pursuant to subsection (a) of this section shall be notified of the applicant's eligibility for administrative relief by certified mail, return receipt requested.

(c) *Application*. An application for administrative relief shall be made on a form prescribed by the Planning Director and may be filed with the Planning and Environmental Resources Department no earlier than the conclusion of the 16th quarterly allocation period and no later than 180 days following the close of the 16th quarterly allocation period.

(d) *Exceptions.* Monroe County shall preclude the granting of administrative relief in the form of the issuance of a building permit for lands within the Florida Forever targeted acquisition or Tier I land areas unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel cannot be purchased for conservation purposes by any county, state or federal agency or any private entity. The county shall routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least six months prior to the deadline for administrative relief.

(e) *Forwarding application to board of county commissioners.* Upon the filing of an application for administrative relief, the Planning Director shall forward to the BOCC all relevant files and records relating to the subject applications. Failure to file an application shall constitute a waiver of any rights under this section to assert that the subject property has been taken by the county without payment of just compensation as a result of the dwelling unit allocation system.

(f) *Public hearing*. Upon receipt of an application for administrative relief, the BOCC shall notice and hold a public hearing at which the applicant will be given an opportunity to be heard. The BOCC may review the relevant applications and applicable evaluation ranking, taking testimony from county staff and others as may be necessary and hear testimony and review documentary evidence submitted by the applicant.

(g) *Board of county commissioners action.* At the conclusion of the public hearing, the BOCC may take any or a combination of the following actions:

(1) Offer to purchase the property at its fair market value as its preferred action if the property is located within:

a. 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);
b. A designated Tier II area (Big Pine Key and No Name Key);
c. A designated Tier III-A area (special protection area); or
d. A designated Tier III area on a nonwaterfront lot or parcel for affordable housing.

(2) Grant the applicant an allocation award for all or a number of dwelling units requested in the next succeeding quarterly allocation period or extended pro rata over several succeeding quarterly allocation periods as the preferred action for buildable properties not meeting any of the criteria in subsection (g)(1) of this section.
(3) Suggest or provide such other relief as may be necessary and appropriate.

(h) *Limits on administrative allocations per quarter*. The number of allocations that may be awarded under administrative relief in any one quarter shall be no more than 50 percent of the total available market rate allocations available, excluding banked administrative relief allocations and those allocations received from Key West, in a quarter for that subarea. Any allocations, excluding banked administrative relief allocations and those allocations received from Key West, in excess of 50 percent shall be extended into the succeeding quarter or quarters until the number of such allocations is 50 percent or less of the total number of market rate allocations available to be awarded.

Sec. 138-28. Evaluation Criteria (ROGO).

(a) *Residential Evaluation Criteria*. The point values established on the following pages are to be applied cumulatively:

For all applications entering the Residential Permit Allocation system after July 13, 2016, the following points and criteria shall apply:

(1) ***Tier designation.*** Utilizing the Tier System for land classification, the following points shall be assigned to allocation applications for proposed dwelling units in a manner that encourages development of infill in predominately developed areas with existing infrastructure and few sensitive environmental features and discourages development in areas with environmentally sensitive upland habitat which are

targeted for acquisition and the retirement of development rights for resource conservation and protection.

Point Assignment:	***Criteria (Outside Big Pine Key and No Name Key):***
+10	Proposes a dwelling unit within areas designated Tier I [Natural Area]
+20	Proposes development within areas designated Tier III-A [Special Protection Area].
+30	Proposes development within areas designated Tier III [Infill Area].

Point Assignment	***Criteria (Within Big Pine Key and No Name Key):***
+0	Proposes a dwelling unit within areas designated Tier I [Natural Area] on Big Pine Key and No Name Key
+10	Proposes development within areas designated Tier II [Transition and Sprawl Reduction Area on Big Pine Key or No Name Key].
+20	Proposes development within areas designated Tier III [Infill Area] on Big Pine Key or No Name Key.

(2) ***Big Pine and No Name Keys -*** The following negative points shall be cumulatively assigned to allocation applications for proposed dwellings to implement the Big Pine Key and No Name Key Habitat Conservation Plan (HCP) and the Livable CommuniKeys Community Master Plan.

Point Assignment:	***Criteria (Within Big Pine Key and No Name Key):***
-10	Proposes development on No Name Key.
-10	Proposes development in designated Lower Keys marsh rabbit habitat or buffer areas as designated in the HCP.
-10	Proposes development in Key Deer Corridor as designated in the HCP.

(3) ***Wetlands.*** The following points shall be assigned to allocation applications on Tier III parcels which have sufficient upland to be buildable (min of 2,000 sq. ft. of uplands)

but also contain wetlands which require 100 percent open space pursuant to the Monroe County Comprehensive Plan and that are located adjacent or contiguous to Tier I properties.

Point Assignment	***Criteria***
-3	Tier III parcels adjacent or contiguous to Tier I properties and containing 50% or less of the following: 1. Submerged lands. 2. Mangroves (excluding tidally inundated mangrove shoreline fringes). 3. Salt ponds. 4. Fresh water wetlands. 5. Fresh water ponds. 6. Undisturbed salt marsh and buttonwood wetlands.
-5	Tier III parcels adjacent or contiguous to Tier I properties and containing more than 50% of the following: 1. Submerged lands. 2. Mangroves (excluding tidally inundated mangrove shoreline fringes). 3. Salt ponds. 4. Fresh water wetlands. 5. Fresh water ponds. 6. Undisturbed salt marsh and buttonwood wetlands.
Notes:	
Adjacent means land sharing a boundary with another parcel of land. An intervening road, right-of-way, or easement shall not destroy the adjacency of the two parcels, except for U.S. 1.	
Contiguous means a sharing of a common border at more than a single point of intersection. Contiguity is not interrupted by utility easements.	
Subsection (3) applies to new applications for Tier III parcels entering the permit allocation system after January 13, 2013.	

(4) ***Aggregation.*** The following points shall be assigned to allocation applications to encourage the voluntary reduction of density, for the retirement of development rights through aggregation of parcels and for the purpose of retirement of development rights through aggregation of legally platted buildable lots.

Point Assignment:	***Criteria: (Outside Big Pine Key and No Name Key):*** [1, 2, 3, 4, 5, 6]
+3 per lot/parcel aggregated	Each additional contiguous vacant, legally platted lot which is aggregated in a designated Tier I area outside of Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified.

	Each additional contiguous vacant parcel with a minimum of 2,000 square feet of uplands which is aggregated in a designated Tier I area outside of Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified.
+4 per lot/parcel aggregated	Each additional contiguous vacant, legally platted lot which is aggregated in a designated Tier III-A (SPA) area outside of Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified. Each additional contiguous vacant parcel with a minimum of 2,000 square feet of uplands which is aggregated in a designated Tier III-A (SPA) area outside of Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified.
+6 per lot/parcel aggregated	Each additional contiguous vacant, legally platted lot which is aggregated in a designated Tier III area outside of Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified. Each additional contiguous vacant parcel with a minimum of 2,000 square feet of uplands which is aggregated in a designated Tier III area outside of Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified.

[1] ***Applies to new applications entering the permit allocation system after July 13, 2016.***

[2] Any parcels (includes lots) aggregated shall require a restrictive covenant and shall be placed under a unity of title with the primary parcel. Clearing of upland native vegetation shall be limited to a maximum of 7,500 square feet (or as specified in Section 118-9) for the primary and aggregated parcels combined, and the remainder of the parcels shall be placed under a conservation easement disallowing any clearing of native habitat.

[3] The County shall not allow the reversal of any lot aggregation used to assign extra points to a ROGO application, whether executed by unity of title and/or restrictive covenant, and regardless of the status of the ROGO allocation award or associated building permit. In the event the dwelling unit was not constructed and the ROGO allocation award has expired, a subsequent ROGO allocation application on the same aggregated parcels will be assigned the same number of extra points originally assigned for the lot aggregation.

[4] A legally binding, restrictive covenant running in favor of the county and enforceable by the County, subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award. Other documents related to the approval of the aggregation include, but are not limited to, unity of title, conservation easement, affidavit of no encumbrance(s), entity affidavit,

joinder(s) subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

[5] Eligibility: For aggregation points a parcel must contain a minimum of 2,000 square feet of uplands. Platted lots shall not be subdivided or otherwise reconfigured in any manner that would allow the number of proposed lots to exceed the number of lots that lawfully existed as of September 15, 1986 and that were approved on the Plat.

[6] When proposing the aggregation of parcels with differing tier designations, points shall be assigned based upon the parcel proposed to be aggregated with the primary parcel and the location of the residential dwelling unit.

Point Assignment:	***Criteria (Within Big Pine Key and No Name Key):*** [1, 2, 3, 4, 5, 6]
+3 per lot/parcel aggregated	Each additional contiguous vacant, legally platted lot which is aggregated in a designated Tier II or III area on Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified. Each additional contiguous vacant parcel with a minimum of 2,000 square feet of uplands which is aggregated in a designated Tier II or III area on Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified
+4 per lot/parcel aggregated	Each additional contiguous vacant, legally platted lot which is aggregated in a designated Tier I area on Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified. Each additional contiguous vacant parcel with a minimum of 2,000 square feet of uplands which is aggregated in a designated Tier I area on Big Pine Key and No Name Key that meets the aforementioned requirements will earn additional points as specified.

[1] ***Applies to new applications entering the permit allocation system after July 13, 2016.***

[2] Any parcels (includes lots) aggregated shall require a restrictive covenant and shall be placed under a unity of title with the primary parcel. Clearing of upland native vegetation shall be limited to a maximum of 7,500 square feet (or as specified in Section 118-9) for the primary and aggregated parcels combined, and the remainder of the parcels shall be placed under a conservation easement disallowing any clearing of native habitat.

[3] The County shall not allow the reversal of any lot aggregation used to assign extra points to a ROGO application, whether executed by unity of title and/or restrictive covenant, and regardless of the status of the ROGO allocation award or associated building permit. In the event the dwelling unit was not constructed and the ROGO allocation award has expired, a subsequent ROGO allocation application on the same aggregated parcels will be assigned the same number of extra points originally assigned for the lot aggregation.

[4] A legally binding, restrictive covenant running in favor of the county and enforceable by the County, subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award. Other documents related to the approval of the aggregation include but not limited to unity of title, conservation easement, affidavit of no encumbrance(s), entity affidavit, joinder(s) subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

[5] For aggregation points a parcel must contain a minimum of 2,000 square feet of uplands. Platted lots shall not be subdivided or otherwise reconfigured in any manner that would allow the number of proposed lots to exceed the number of lots that lawfully existed as of September 15, 1986 and that were approved on the Plat.

[6] When proposing the aggregation of parcels with differing tier designations, points shall be assigned based upon the parcel proposed to be aggregated with the primary parcel and the location of the residential dwelling unit.

(5) ***Land dedication.*** The following points shall be assigned to allocation applications to encourage, the voluntary dedication of vacant, buildable land within Tier I designated areas, Tier II (Big Pine Key and No Name Key), Tier III-A Special Protection Areas (SPA), and parcels which contain undisturbed wetlands for the purposes of conservation, resource protection, restoration or density reduction and, if located in Tier III outside of Special Protection Areas (SPA), for the purpose of retirement of development rights or providing land for affordable housing where appropriate. Applicants can utilize lands dedicated pursuant to Policy 101.5.26; however, submerged lands (inundated by water) shall not be eligible for land dedication.

Point Assignment:	***Criteria: (Outside Big Pine and No Name Key):***
+4 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III for affordable housing, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot with a minimum of 2,000 square feet of uplands, designated as Tier III for the retirement of development rights. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+4 for each parcel	Proposes dedication to Monroe County of one (1) vacant parcel with a minimum of 2,000 square feet of uplands, designated as Tier III for the retirement of development rights. Each additional vacant parcel that meets the aforementioned requirements will earn points as specified.
+1 for each platted lot	Proposes dedication to Monroe County of a vacant, legally platted lot within a Tier I area, designated as Residential Low containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+0.5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot within a Tier I area, designated as Residential Conservation containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier I area containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+4 for each acre	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier I area containing a minimum of 2,000 square feet of uplands. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.

+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot which contains undisturbed wetlands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+2.5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier I, containing a minimum of 2,000 square feet of uplands and not designated as Residential Conservation or Residential Low. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III-A (Special Protection Area-SPA) containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier III-A area containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+3 for each parcel	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier III-A area containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
Additional Requirements	
	A statutory warranty deed that conveys the dedicated property to the county shall be approved by the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award. Other documents related to the approval of the land dedication may include, but are not limited to, affidavit of no encumbrance(s), entity affidavit, subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

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Point Assignment:	***Criteria (Within Big Pine Key and No Name Key):****
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier I on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+4 for each acre	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier I area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier I area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier II on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+3 for each acre	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier II area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier II area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.

Point Assignment:	***Criteria (Within Big Pine Key and No Name Key):****
+4 for each parcel	Proposes dedication to Monroe County of one (1) vacant parcel, designated as Tier III on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant parcel that meets the aforementioned requirements will earn points as specified.
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot on Big Pine Key or No Name Key which contains undisturbed wetlands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
Additional Requirements	
	A statutory warranty deed that conveys the dedicated property to the county shall be approved by the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award. Other documents related to the approval of the land dedication may include but are not limited to affidavit of no encumbrance(s), entity affidavit, subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

(6) ***Market rate housing in employee or affordable housing development.*** The following points shall be assigned to allocation applications for market rate housing units in an employee or affordable housing development:

Point Assignment:	***Criteria:***
+6	Proposes a market rate housing unit which is part of an affordable or employee housing project; both affordable and employee housing shall meet all the requirements set forth in Sec. 139-1.

(7) ***Special flood hazard areas.*** The following points shall be assigned to allocation applications for proposed dwelling unit(s) to provide a disincentive for locating within certain coastal high flood hazard areas:

Point Assignment:	***Criteria:***
-6	Proposes structures requiring an allocation within "V" zones on the FEMA flood insurance rate maps.
-4	An application for which development is proposed within a CBRS unit.

(8) ***Central wastewater system availability***. The following points shall be assigned to allocation applications to direct development to areas with sewer:

Point Assignment:	***Criteria:***
+4*	Proposes development required to be connected to a central wastewater treatment system that meets the AWT treatment standards established by Florida Legislature and Policy 901.1.1.
*These points shall not apply to parcels within a CBRS system unit.	

(9) ***Payment to the Land Acquisition Fund***. Up to two (2) whole points shall be awarded for a monetary payment by the applicant to the County's land acquisition fund for the purchase of lands for conservation, and retirement of development rights. The monetary value of each point shall be set annually by the County based upon the estimated average fair market value of vacant, privately-owned, buildable IS/URM zoned, platted lots.

Additional Requirements:

1. The monetary value of each point shall be established annually by resolution of the BOCC.
2. The monetary value of each point shall be based upon the average fair market value of privately-owned, buildable, vacant, IS/URM, platted lots divided by four.
3. Payment to the County's land acquisition fund shall be prior to the issuance of any building permit pursuant to the allocation award.

(10) ***Energy and Water Conservation.*** The following points shall be assigned to allocation applications on lands designated as Tier III to encourage the planting of native vegetation and promote water conservation and increased energy efficiency:

Point Assignment:	***Criteria:***
+3	Proposes a dwelling unit designed according to and certified to the standards of a sustainable building rating or national model green building code.
+1	Dwelling unit includes installation of a permanent concrete cistern with a minimum capacity of 1,000 gallons.
+2	Dwelling unit includes the installation of a gray water reuse system, meeting the requirements of the Florida Building Code.
+1	Dwelling unit includes installation of a solar photovoltaic collection system, a minimum of 3KW in size or the equivalent in other renewable energy systems.*
+0.5	Dwelling unit includes installation of one or both of the following technologies:* a. Ductless air conditioning system. b. High efficiency chillers.
**** The systems must be maintained for a minimum of five years from C.O. unless replaced with a system that provides a functional equivalent or increased energy or water savings.***	

(11) ***Perseverance Points.***

Point Assignment:	***Criteria:***
+1 for four years +0.5 after four years	For parcels designated Tier I, II or III-A, one (1) point shall be awarded for each year that the allocation application remains in the allocation system up to four (4) years. After four (4) years, the application shall be awarded 0.5 points for each year the application remains in the system.
+2 for four years +1 after four years	For parcels designated Tier III, two (2) points shall be awarded for each year that the allocation application remains in the allocation system up to four (4) years. After four (4) years, the application shall be awarded one (1) point for each year the application remains in the system.

Applications entering the ROGO system after July 13, 2016, shall receive perseverance points as listed above.

Applications in the ROGO system on the effective date of the ordinance which were receiving perseverance points beyond the first four years in the system at an annual rate of +2 points for each year that the application remains in the ROGO system, shall be eligible to continue to earn points at an annual rate of +2 points for each year that the application remains in the ROGO system.

All other applications competing in the ROGO system that have not received an allocation award in quarter 4, ROGO year 24, ending July 12, 2016, shall receive perseverance points as listed above.

(12) The County shall not allow the reversal of any 'acreage tract density reduction,' previously approved restrictive covenant by the County and recorded in the official records of Monroe County, Florida, and used to assign extra points to a ROGO application, regardless of the status of the ROGO allocation award or associated building permit. In the event the dwelling unit was not constructed and the ROGO allocation award has expired, a subsequent ROGO allocation application on the same parcel(s) will be assigned the same number of extra points originally assigned for the 'density reduction.'

(13) All applicants in the ROGO system upon the effective date of the ordinance from which this article is derived shall be notified by regular mail within 30 days from the effective date of the ordinance from which this article is derived by the county Planning and Environmental Resources Department of the new ROGO scoring system. In this notification, applicants shall be informed that they have 30 days from the date of the notification, if they so choose, to submit a revision to their ROGO application to receive positive points through aggregation, land dedication, or payment of fees to the land acquisition fund. Within this one-time, 30-day time period, applicants shall be able to revise their applications without payment of fees or a change in their controlling date upon condition that their approved building permit application is not revised.

Sec. 138-29 Appeals.

(a) An appeal from the decision of the Planning Commission on a ROGO allocation shall be made to the BOCC. The notice of such appeal shall be in a form prescribed by the Planning Director and must be filed with the Planning Director within 20 working days of the Planning Commission's decision. Upon the filing of an appeal, the Planning Commission's secretary will forward to the board all relevant files and records relating to the matter. Failure to file an appeal with the BOCC shall constitute a waiver of any rights under this chapter to further dispute the decision of the Planning Commission.

(b) The filing of an appeal shall not stay either the action of the Planning Commission or the action of the director of planning.

(c) If, as a result of a successful appeal, additional allocation awards are to be made, the BOCC shall instruct the Planning Director as to how many dwelling unit applications shall receive allocation awards, when such allocation awards are to be made and what effect such additional allocation awards will have on the current annual or quarterly dwelling unit allocation. To ensure that the dwelling unit allocations set forth in Section 138-24 are not exceeded, the Planning Director shall inform the Planning Commission of the results of the appeal and the disposition of any additional allocation awards.

Secs. 138-30—138-46. Reserved.

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ARTICLE III. NONRESIDENTIAL RATE OF GROWTH LIMITATIONS (NROGO)

Sec. 138-47. Nonresidential Rate of Growth Ordinance (NROGO).

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

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

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

Annual nonresidential ROGO allocation, also referred to as an annual NROGO allocation, means the maximum floor area that may be allocated during an annual allocation period.

Buildable lot or parcel, for the purposes of this article, means a lot or parcel which must contain a minimum of 2,000 square feet of uplands, including any disturbed wetlands that can be filled.

Canopy, also referred to as a sunshade, in reference to a structure, means an unenclosed, covered area. A canopy may be a free-standing structure or may project from the wall of a building.

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

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

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

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

Nonresidential floor area means the sum of the total floor area for a nonresidential building or structure, as defined in Section 101-1. Additionally, covered and unenclosed boat racks with three or fewer sides not associated with retail sales of boats are not considered nonresidential floor area. Further, the term "nonresidential floor area" does not include space occupied by

residential uses, including spaces occupied by a transient residential unit and an institutional-residential use as defined in Section 101-1.

Nonresidential ROGO allocation, also referred to as NROGO allocation, means the maximum amount of nonresidential floor area which may be allocated in a given time period.

Nonresidential ROGO allocation award, also referred to as NROGO allocation award, means the approval of a nonresidential ROGO application prior to the application and subsequent issuance of a building permit to authorize construction of new nonresidential floor area.

Nonresidential ROGO bank, also referred to as NROGO bank, means the cumulative total of a) NROGO allocations that were not awarded and thereby not allocated due to a lack of demand, b) nonresidential floor area not made available for the annual NROGO allocation by the BOCC; and c) allocated nonresidential floor area reclaimed due to the abandonment or expiration of approved development that received an NROGO allocation award.

Nonresidential ROGO bank account, also referred to as NROGO account, means one of the two accounts that cumulatively establish the NROGO bank. There are two accounts within the NROGO bank, with each carrying an independent balance of nonresidential floor area: 1) the Big Pine/No Name ROGO subarea account; and 2) the Upper and Lower Keys general (joint) account.

Quarterly nonresidential ROGO allocation period means any one of the four periods within an annual allocation period.

Quarterly nonresidential ROGO allocation means the maximum number of amount of nonresidential floor area square footage which may be allocated in a quarterly allocation period.

Site means the parcels of land required to be aggregated to be developed or from which existing nonresidential floor area is to be transferred or received.

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

(1) To facilitate implementation of goals, objectives and policies set forth in the comprehensive plan relating to maintaining a balance between residential and nonresidential growth.
(2) To maintain a ratio of approximately 239 square feet of nonresidential floor area for each new residential permit issued through the residential rate of growth ordinance (ROGO) by ROGO subarea.
(3) To promote the upgrading and expansion of existing small-size businesses and to retain the predominately small scale character of nonresidential development in the Florida Keys.

(4) To regulate the rate and location of nonresidential development in order to eliminate potential land use conflicts.
(5) To allocate the nonresidential floor area annually hereunder, based on the goals, objectives and policies of the comprehensive plan and the community master plans.

Sec. 138-48. General provisions.

(a) Nonresidential ROGO allocation award required. No building permit shall be issued after September 19, 2001 that results in additional nonresidential floor area on a site unless that nonresidential development has received an NROGO allocation award or is determined to be exempt as provided in Section 138-50.

(b) Applicable geographic area. The NROGO allocation system shall apply within the unincorporated area of the county, excluding areas within the county mainland and within Ocean Reef planned development.

Sec. 138-49. Type of development affected; special requirements.

(a) The NROGO shall apply to the development of all new and expanded nonresidential floor area, except as exempted by Section 138-50, for which a building permit or other final development approval is required.

(b) Unincorporated areas other than Big Pine Key and No Name Key. Notwithstanding the provisions of development, as defined in Section 101-1, the following new uses shall only be eligible for an NROGO allocation under this article on sites located within a designated area approved for such use, identified within a community master plan and/or an overlay district established within Chapter 130:

(1) Commercial retail very high-intensity uses that generate more than 150 vehicle trips per 1,000 square feet of floor area.

(c) *Big Pine Key and No Name Key.* Notwithstanding the provisions of development, as defined in Section 101-1, in accordance with the community master plan for Big Pine Key and No Name Key, the following new uses or changes in use are prohibited on Big Pine Key and No Name Key:

(1) Commercial retail high-intensity uses that generate more than 150 vehicle trips per 1,000 square feet of floor area.

(d) Nonpublic institutional uses on Big Pine Key and No Name Key are subject to the provisions of NROGO pursuant to the following special conditions and standards:

(1) A nonpublic institutional floor area and use existing on the effective date of the issuance of the incidental take permit for the Florida Key Deer and other covered

species may be expanded by 2,500 square feet of floor area per NROGO year, provided that the land was owned by the institutional organization at the time of the issuance of the incidental take permit. These allocations are to be made on a "first come, first served" basis.

(2) New nonpublic institutional uses on Big Pine Key and No Name Key are subject to the provisions of NROGO.

(e) All new or expanded nonresidential development on Big Pine Key and No Name Key is subject to the provisions of the incidental take permit and the habitat conservation plan for the Florida Key Deer and other covered species, which may affect NROGO allocations under this article. All new and expanded nonresidential development shall be limited to scarified or disturbed lands, and clearing of any pinelands and/or hammock is prohibited.

Sec. 138-50. Type of development not subject to the NROGO permit allocation system.

The NROGO shall not apply to the development described below:

(a) *Development with no net increase in nonresidential floor area*. The redevelopment, rehabilitation or replacement of any lawfully established nonresidential floor area which does not increase the amount of nonresidential floor area greater than that which existed on the site prior to the redevelopment, rehabilitation or replacement.

The Planning Director shall review available documents to determine if a body of evidence exists to support the lawful existence of nonresidential floor area on or about September 19, 2001, the effective date of the original NROGO. Such evidence shall be documented and submitted to the Planning Director on a form provided by the Planning and Environmental Resources Department. Any issued Monroe County building permit(s) confirming the existence of the structure(s) and its use(s) on or about September 19, 2001 can stand as the only piece of evidence for an NROGO exemption.

If there are no building permit(s) which confirm the lawful existence of the structure(s) and its use(s) on or about September 19, 2001, the application shall include, at a minimum, at least two of the following documents:

(1) Any other issued Monroe County building permit(s) supporting the existence of the structure(s) and its use(s) on or about September 19, 2001;
(2) Documentation from the Monroe County Property Appraiser's Office indicating residential use on or about September 19, 2001;
(3) Aerial photographs (to confirm the number of structures, not the type of structure) and original dated photographs showing the structure(s) existed on or about September 19, 2001;
(4) Nonresidential County Directory entries on or about September 19, 2001;
(5) Rental, occupancy or lease records, on or about September 19, 2001, indicating the number, type and term of the rental or occupancy;

(6) State and/or county licenses, on or about September 19, 2001, indicating the nonresidential use;
(7) Documentation from the utility providers indicating the type of service (commercial or residential) provided and the number of meters in existence on or about September 19, 2001; and
(8) Similar supporting documentation not listed above as determined suitable by the Planning Director.

Nonresidential floor area established after the effective date of the original NROGO should be documented through the NROGO permit allocation system. Such nonresidential floor area that received such an NROGO allocation(s) that was constructed may be lawfully established through verification of the certificate of completeness/occupancy alone. Provision of affidavits to support the existence of nonresidential floor area is allowed, but affidavits cannot be the sole record upon which a decision is based. Other than files in which the growth management division is custodian, provision of documents is the responsibility of the applicant. Nonresidential floor area determined to be exempt from the NROGO per this subsection that has not been previously acknowledged by the Planning Director may also be a nonconformity, pursuant to Chapter 102, article III nonconformities. Such occasions shall require a separate determination by the Planning Director as to the lawfulness of the nonconformity.

(b) *Areas exempted from residential ROGO.* Any area of the unincorporated county exempted from residential ROGO as provided for in Section 138-22.

(c) *Public/governmental uses.* Public/governmental uses, including public buildings, as defined in Section 101-1.

(d) *Development activity for certain not-for-profit organizations.* Except for the nonpublic institutional uses on Big Pine Key and No Name Key pursuant to Section 138-49, nonresidential development activity within Tier III designated areas by federally tax exempt not-for-profit educational, scientific, health, religious, social, cultural and recreational organizations which predominately serve the county's non-transient population, if approved by the BOCC after review and recommendation by the Planning Director and Planning Commission. This exemption is subject to the condition that a restrictive covenant be placed on the property prior to the issuance of a building permit. The restrictive covenant shall run in favor of the county for a period of at least 20 years. Any change in the use or ownership of the property subject to this restrictive covenant shall require prior approval by the Planning Commission, unless the total floor area exempted by the Planning Commission is obtained through an off-site transfer of floor area and/or nonresidential floor area allocation. If the total amount of floor area that is transferred and/or allocated meets or exceeds the total amount of floor area exempted, the restrictive covenant shall be vacated by the county. This exemption is not applicable to nonresidential development proposed within any Tier I or Tier III-A (special protection area) designated areas.

(e) *Vested rights.* Landowners with a valid, unexpired development of regional impact approval granted by the county prior to January 4, 1996, (effective date of the Comprehensive Plan) or an approved vesting determination by the county from the nonresidential allocation requirements of this section and the Comprehensive Plan.

(f) *De expansion or de minimis addition of new nonresidential floor area.* The cumulative addition of up to 1,000 square feet of new nonresidential floor area shall not require an NROGO application and NROGO allocation prior to issuance of a building permit. De minimis is not required to be utilized in whole or limited to a single building permit application; however cumulatively, an individual property shall not receive any more than 1,000 square feet of new nonresidential floor via de minimis expansion and/or addition. Nonresidential floor area permitted via de minimis expansion and/or addition shall be deducted from the annual NROGO allocation or the NROGO bank.

(g) *Uses in the Industrial (I) and Maritime Industries (MI) districts.* Industrial uses in the Maritime Industries (MI) and the Industrial (I) land use (zoning) districts, provided that the floor area is restricted to manufacturing, assembly, wholesaling, and distribution uses. Uses permitted in the Rockland Key Commercial Retail Center Overlay District pursuant to Section 130-131. All other forms of industrial uses and other nonresidential uses which may be permitted in the land use (zoning) district are subject to the requirements of this article and will require an NROGO allocation.

(h) *Agriculture/aquacultural uses.* Agricultural and aquacultural uses in the agricultural and aquaculture use overlay (A).

(i) *Canopy*.

(j) *Transfer off-site of existing nonresidential floor area.* The demolition/removal and transfer off-site of nonresidential floor area from a sender site and the development of the transferred nonresidential floor area on a receiver site in accordance with the following procedures and criteria:

(1) *Eligibility of sender floor area.* Nonresidential floor area shall be lawfully established floor area pursuant to subsection (a) or have received an NROGO allocation or transfer of floor area after September 19, 2001.

(2) *Criteria*:

a. The receiver site shall be within a Tier III designated area and, if on Big Pine Key, it shall also be is located within the designated community center overlay area;

b. The receiver site shall be located within the same ROGO subarea, as set forth in Section 138-20, as the sender site;

c. The use that would utilize the transferred nonresidential floor area on the receiver site shall not be a high-intensity commercial retail use which will

generate more than 150 daily vehicle trips per 1,000 square feet of floor area, unless the receiver site is within an overlay district or area, established in a community master plan or within Chapter 130, specifically allowing such a high-intensity commercial retail use;

d. The receiver site shall not be located within a V special flood hazard zone;

e. The receiver site shall not be located in a coastal barrier resources system; and

f. The receiver site shall not be located in an offshore island/conservation land protection area.

(3) *Limitations on the amount of nonresidential floor area which may be transferred to any one site.* The amount of nonresidential floor area which may be transferred to any one site shall be as follows:

a. No more than a maximum cumulative total of 50,000 square feet of nonresidential floor area may be transferred to any one site.

b. A structure utilizing the transferred nonresidential floor area shall not be greater than 10,000 square feet, except for a) a structure within the Urban Commercial (UC) land use (zoning) district consist of up to a maximum total of 50,000 square feet of nonresidential floor area and b) a structure within an overlay district or area, established in a community master plan or within Chapter 130, may consist of up to a maximum total of nonresidential floor area set forth in the superseding overlay district or area.

(4) *Procedures.* The following procedures shall be followed for permitting transfer of nonresidential floor area off-site:

a. A minor conditional use permit shall be required to identify, determine the eligibility of and document the approval of the sender and receiver site, pursuant to the process set forth in Section 110-69. If a single receiver site is proposed to receive the transferred nonresidential floor area from multiple sender sites, only a single minor conditional use permit application shall be required. All sender and receiver sites associated with a proposed transfer shall be identified at the time of application.

b. The minor conditional use permit application required in the previous subsection shall be submitted in a form provided by the Planning and Environmental Resources Department. A development order shall memorialize approval of the minor conditional use permit. After successfully passing all applicable appeal periods, the development order shall be recorded in the official records of the Monroe County Clerk of the Circuit Court. Such recording shall be carried out so that the document is associated with all applicable sender and receiver sites.

c. No building permit shall be issued for the nonresidential floor area on the receiver site until the sending site structure is demolished as per an issued

demolition permit and a final inspection for the demolished floor space has been completed by the Building Department.

Sec. 138-51. NROGO Allocations.

(a) *Maximum amount of available floor area for the annual nonresidential ROGO allocations.* The annual amount of floor area available for allocation under NROGO shall be 47,083 square feet. Beginning NROGO Year 22 (July 13, 2013), this floor area shall be distributed to each of subareas as provided in the following table:

ROGO subarea	Annual NROGO allocation
Upper	22,944 SF
Lower	21,749 SF
Big Pine/No Name	2,390 SF
Total	47,083 SF

(b) *Maximum allocation of nonresidential floor area by site per each allocation quarter.* The amount of nonresidential floor area to be allocated shall be limited to a maximum share of 10,000 square feet for any one site per each allocation quarter.

(c) *Maximum floor area per structure.* A structure shall not receive an allocation that expands the structure to more than 10,000 square feet of nonresidential floor area, excluding: a) a structure in the Urban Commercial (UC) land use (zoning) district may receive an allocation that expands the structure to not more than 50,000 square feet and b) a structure within an overlay district established in a community master plan, in which the maximum shall be governed by the master plan if applicable, or within Chapter 130 specifically allowing such a structure of over 10,000 square feet.

(d) *Allocation dates.* To be considered for an allocation award, all NROGO applications must be submitted to the Planning and Environmental Resources Department and deemed complete by the Planning Director, or his or her designee, by no later than 4:00 p.m. on the specified allocation quarter closure, which shall be the same dates as those for the residential ROGO.

(e) *Annual nonresidential ROGO allocation.* This annual allocation shall be distributed between the four allocation quarters, which shall be the same dates as those for the residential ROGO.

Sec. 138-52. Application procedures for NROGO.

(a) *Deadlines for submission of building permit applications to be entered into the nonresidential permit allocation system.* No approved building permit application requiring an NROGO allocation award, including applications submitted under privatized plan review as provided for by Chapter 553, F.S., shall be accepted for the entry into the NROGO system under this chapter, unless the building permit application is submitted to the Building Department at least 30 days prior to the end of the allocation period appropriate for the application. A submission 30 days prior does not guarantee that it will enter NROGO that quarter if it has not passed all required reviews.

(b) *Application for allocation by way of the NROGO allocation system.* Applications competing in the Residential Permit Allocation system that have not received an allocation award in quarter 4, ROGO year 24, ending July 12, 2016, shall receive perseverance points as listed above. The Planning and Environmental Resources Department shall accept applications to enter the NROGO system. The NROGO application must be accompanied by an approved building permit application in order to be considered. The Planning Director, or his or her designee, shall review the NROGO application for completeness. If the application is determined to be incomplete, the Planning Director, or his or her designee, shall reject the NROGO application and provide a written notice to the applicant specifying the application's deficiencies, and the reasons therefore, within fifteen (15) working days. The Planning Director or his or her designee shall take no further action on the application unless the deficiencies are remedied. If determined to be complete, the application shall be assigned a controlling date.

(c) *Application requirements*. The NROGO application shall be submitted in a form provided by the Planning and Environmental Resources Department and meet the following requirements:

(1) The application shall include a) the name and address of the property owner(s) of record and any authorized agents, b) the property record card(s) from the Monroe County Property Appraiser, c) a written legal description of the property proposed for development, d) a boundary survey of the property proposed for development, prepared by a surveyor registered in the State of Florida, showing the boundaries of the site, elevations, bodies of water and wetlands on the site and adjacent to the site, existing structures including all impervious areas, existing easements, total acreage and total acreage by habitat and e) a site plan. The boundary survey and site plan may be filed with the corresponding building permit application. Additional copies of the boundary survey and site plan are not required to be filed with the NROGO application.

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

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

a. Date, north point and graphic scale;
b. Boundary lines of site, including all property lines and mean high-water, lines shown in accordance with Florida Statutes;
c. All attributes from the boundary survey;
d. Future Land Use Map (FLUM) designation(s) of the site;
e. Land Use (Zoning) District designation(s) of site;
f. Tier designation(s) of the site;
g. Flood zones pursuant to the Flood Insurance Rate Map;
h. Setback lines as required by this Land Development Code;
i. Locations and dimensions of all existing and proposed structures, including all paved areas and clear site triangles;
j. Size and type of buffer yards and parking lot landscaping areas, including the species and number of plants;
k. Extent and area of wetlands, open space preservation areas and conservation easements;
l. Delineation of habitat types to demonstrate buildable area on the site, including any heritage trees identified and any potential species that may use the site (certified by an approved biologist and based on the most current professionally recognized mapping by the U.S. Fish and Wildlife Service);
m. Drainage plan including existing and proposed topography, all drainage structures, retention areas, drainage swales and existing and proposed permeable and impermeable areas;
n. Location of fire hydrants or fire wells;
o. The location of public utilities, including location of the closest available water supply system or collection lines and the closest available wastewater collection system or collection lines (with wastewater system provider) or on-site system proposed to meet required County and State of Florida wastewater treatment standards; and
p. A table providing the total land area of the site, the total buildable area of the site, the type and square footage of all nonresidential land uses, the type and number of all dwelling units, the amounts of impervious and pervious areas, and calculations for land use intensity, open space ratio, and off-street parking.

(d) *Fee for review of application.* Each NROGO application shall be accompanied by a nonrefundable processing fee established by resolution of the BOCC. Additional fees are not required for successive review of the same NROGO application unless the application is withdrawn and resubmitted.

(e) *Compliance with other requirements.* The NROGO application shall not constitute an indication of whether or not the applicant for the nonresidential floor area allocation has satisfied and complied with all county, state, and federal requirements otherwise imposed by the county regarding conditions precedent to issuance of a building permit.

(f) *Time of review.* The Planning Director may retain the allocation application and its associated building permit application for review pursuant to the evaluation procedures and criteria set forth in Section 138-53 and Section 138-55.

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

(h) *Limitation on number of applications.*

(1) An individual entity or organization may have only one active NROGO application per site in the allocation period.
(2) There shall be no limit to the number of separate projects for which NROGO applications may be submitted by an individual, entity or organization.

(i) *Expiration of allocation award.* Except as provided for in this article, an allocation award shall expire when its corresponding building permit is not picked up after 60 days of notification by certified mail of the award, or, after issuance of the building permit, upon expiration of the permit or after failure of the applicant to submit required plan revisions by the required date set forth in subsection (m) or after the failure to conclude the required coordination with FWS under the Permit Referral Process in Section 122-8(d)(5).

(j) *Withdrawal of NROGO application.* An applicant may elect to withdraw an NROGO application without prejudice at any time up to finalization of the evaluation rankings by the Planning Commission. Revision and resubmission of the withdrawn application must be in accordance with subsection (k) of this section.

(k) *Revisions to applications and awards.*

(1) Upon submission of an NROGO application, an applicant may revise the application if it is withdrawn and resubmitted prior to the allocation date for the allocation period in which the applicant wishes to compete. Resubmitted applications shall be considered new, requiring payment of appropriate fees and receiving a new controlling date.

(2) After receipt of an allocation award, and either before or after receipt of a building permit being obtained, but prior to receipt of a certificate of occupancy or final inspection, no revisions shall be made to any aspect of the proposed nonresidential development which formed the basis for the evaluation review, determination of points and allocation rankings, unless such revision would have the effect of increasing the points awarded without the removal of any land dedication or removal of an affordable housing deed restriction.

(3) After the receipt of an allocation award, a building permit and a certificate of occupancy or final inspection, no revision shall be made to any aspect of the completed nonresidential development which formed the basis for the evaluation, review, determination of points and allocation rankings, unless such revisions are accomplished pursuant to a new building permit and unless such revisions would have the net effect of either maintaining or increasing the number of points originally awarded.

(l) *Clarification of application data.*

(1) At any time during the NROGO allocation review and approval process, the applicant may be requested by the Planning Director or the Planning Commission, to submit additional information to clarify the relationship of the allocation application, or any elements thereof, to the evaluation criteria. If such a request is made, the Planning Director shall identify the specific evaluation criterion at issue and the specific information needed and shall communicate such request to the applicant.

(2) Upon receiving a request from the Planning Director for such additional information, the applicant may provide such information; or the applicant may decline to provide such information and allow the allocation application to be evaluated as submitted.

(m) *Revisions of building permit applications requiring the NROGO allocation(s).* A building permit application for proposed nonresidential floor area requiring an NROGO allocation must be approved prior to submitting an NROGO application. In the event that the Florida Building Code is amended between the date on which an NROGO application is submitted and the date on which a building permit requiring the NROGO allocation(s) applied for is issued (which follows the date on which the required allocation(s) is awarded), if necessary, the applicant shall submit plan revisions to the building permit application demonstrating full compliance with the current Florida Building Code in effect. These plan revisions shall be submitted within 180 days of the NROGO allocation award date or the applicant shall forfeit the NROGO allocation award. Following receipt of the plan revisions, the Building Department shall review the revisions as if the application is new (however retaining the same building permit number for administrative purposes), based on

the building code, for compliance prior to issuance of the building permit requiring the NROGO allocation(s) by the Building Official. Such mandatory revisions and review are limited to the modifications necessary to demonstrate compliance with the Florida Building Code in effect at the time of building permit issuance. This is not applicable to the Land Development Code.

(n) *Application for allocation by way of the NROGO bank.* The Planning and Environmental Resources Department shall maintain a record of NROGO allocations that were not awarded in annual NROGO allocation periods. This shall be known as the NROGO bank. As of July 12, 2012 (NROGO Year 20), the NROGO bank balance for each ROGO subarea was as follows:

Big Pine Key and No Name Key ROGO subarea	4,339 square feet
Upper Keys & Lower Keys ROGO subareas	389,991 square feet

Prior to the opening date of NROGO Year 22 (July 13, 2013), the Planning and Environmental Resources Department shall determine the precise balance of the NROGO bank.

Upon availability of nonresidential floor area in a given and applicable ROGO account within the NROGO bank, the Planning and Environmental Resources Department shall accept applications from applicants requesting the banked nonresidential floor area. The NROGO application must be accompanied by an approved building permit application in order to be considered. The Planning Director, or his or her designee, shall review the application for completeness. If the application is determined to be incomplete, the Planning Director shall reject the application and notify the applicant of such rejection, and the reasons therefor, within 30 days. The application shall be submitted in a form provided by the Planning and Environmental Resources Department and meet the same requirements for a standard NROGO application as set forth in subsection 138-52(b). Each application shall be accompanied by a nonrefundable processing fee as established by resolution of the board of county commissioners.

Sec. 138-53. Evaluation Procedures for Nonresidential Floor Area Allocation.

(a) *Initial evaluation of allocation applications.* Upon receipt of completed NROGO allocation applications, the Planning Director or his or her designee shall evaluate the allocation applications pursuant to the evaluation criteria set forth in Section 138-55.

(1) Within 30 days of an allocation date, unless otherwise extended by the Planning Commission, the Planning Director shall:

a. Complete the evaluation of all allocation applications submitted during the relevant allocation period;

b. Total the amount of square footage for which allocation applications have been received for each ROGO subarea (Upper Keys; Lower Keys; and Big Pine Key/No Name Key); and
c. Rank the allocation applications, in descending order from the highest evaluation point total to the lowest for each ROGO subarea and by controlling date pursuant to subsection (d).

(b) *Public hearings and allocation awards.* Upon completion of the evaluation ranking report and/or recommendation, the Planning Director shall schedule and notice a public hearing by the Planning Commission pursuant to otherwise applicable regulations.

(1) At or prior to the public hearing, the Planning Commission may request, and the Planning Director shall supply, copies of the allocation applications and the evaluation worksheets.
(2) Upon review of the allocation applications and evaluation worksheets, the Planning Commission may adjust the points awarded for meeting a particular criterion, adjust the rankings as a result of changes in points awarded, or make such other changes as may be appropriate and justified.
(3) The basis for Planning Commission changes shall be specified in the form of a motion to adopt the allocation rankings and may include the following:

a. A mistake in the application of one or more of the evaluation criteria; and
b. A misinterpretation of the applicability of an evaluation criterion.

(4) The public, including, but not limited to, applicants for allocation awards, shall be permitted to testify at the public hearing. Applicants may offer testimony about their applications or other applications; however, in no event may an applicant offer modifications to an application that could change the points awarded or the ranking of the application.
(5) At the conclusion of the public hearing, the Planning Commission may:

a. Move to accept the evaluation rankings as submitted by the Planning Director;
b. Move to accept the evaluation rankings as may be modified as a result of the public hearing;
c. Move to continue the public hearing to take additional public testimony;
d. Move to close the public hearing but to defer action on the evaluation rankings pending receipt of additional information; and
e. Move to reject the evaluation rankings.

(6) The Planning Commission shall finalize the evaluation rankings within 60 days following initial receipt of the Planning Director evaluation ranking, report and recommendation.

(c) *Notification to applicants.* Upon finalization of the evaluation rankings by the Planning Commission, notice of the rankings shall be posted at the Planning and Environmental Resources Department and at such other places as may be designated by the Planning Commission.

(1) Applicants who receive allocation awards shall be further notified by certified mail, return receipt requested. After three (3) unsuccessful attempts to notify the applicant via certified mail, return receipt requested, the allocation award shall expire. Upon receipt of notification of an allocation award, the applicant may request issuance of a building permit for the applicable development of the allocated nonresidential floor area.

(2) Applicants who fail to receive allocation awards shall be further notified by regular mail, return receipt requested; without further action by such applicants nor the payment of any additional fee, such applications shall remain in the NROGO system for reconsideration at the next allocation in the current or following annual allocation period.

(d) *Identical rankings.* If two or more allocation applications in a given size classification receive an identical evaluation ranking and both (or all) cannot be granted allocation awards within the allocation period, the Planning Commission shall award the allocation to the completed application first submitted, based on the controlling date of the application. If two or more such completed applications were submitted with the same controlling date, the available allocation shall be awarded to the application with the fewest number of negative points.

(e) *Allocation by way of the NROGO bank.* Concerning applications submitted pursuant to Section 138-52(n), if nonresidential floor area is available in an NROGO subarea account within the NROGO bank, upon receipt of completed application, the Planning Director shall evaluate the application pursuant to the evaluation criteria set forth in Section 138-55.

(1) *Public hearing*. Excluding reservations granted by the BOCC, the Planning Director shall schedule and notice the application for review and decision by the Planning Commission at a public hearing.

a. *Allocation by Planning Commission*. Allocations by way of the NROGO bank shall only be awarded four times per NROGO year, on the same public hearing dates in which annual NROGO allocations are awarded per Section 138-53(b). Such allocations shall be awarded pursuant to subsections (e)(2) through (e)(12).

b. *Reservation of allocation by the Board of County Commissioners*. Notwithstanding provisions of subsections (e)(2) through (e)(12), the BOCC may, for projects in excess of 10,000 square feet of nonresidential floor area, reserve by resolution, for up to eighteen (18) months, some or all of the available nonresidential floor area within an applicable account within the

NROGO bank for a specified development. Prior to the public hearing in which the reservation is to be considered, the applicant shall a) if necessary, have entered into a development agreement with Monroe County for the development requiring the nonresidential floor area and b) if required, have been issued a conditional use permit for the development requiring the nonresidential floor area. 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.

(2) *NROGO bank accounts*. Beginning July 13, 2013, the NROGO bank shall consist of two accounts. The accounts consist of 1) Upper Keys and Lower Keys (joint or general) account, and 2) Big Pine Key and No Name Key subarea account. The boundaries of the ROGO subareas are defined in section 138-20(c). An applicant may only request nonresidential floor area from the account associated with the ROGO subarea in which the subject property is located. As of July 13, 2013, pursuant to Section 138-51(a), the distribution of the annual NROGO allocation shall be distributed to each of the ROGO subareas based on the number of dwelling unit permits made available for each of the ROGO subareas. The unused remainders of nonresidential floor area from the annual NROGO allocation for each of the ROGO subareas shall roll over into the applicable NROGO accounts (general or Big Pine Key and No Name Key subarea account within the NROGO bank each year. Nonresidential floor area within a given subarea NROGO account shall be available for eligible developments within the boundaries of that subarea. The nonresidential floor area within the general (joint) NROGO account shall be available for eligible developments within the boundaries of either the Upper Keys or Lower Keys subareas. On the opening day of each subsequent NROGO year (July 13), excluding the reserves provided for in subsection (e)(4), the non-reserve balances of the general (joint) account shall be returned to the general (joint) account for the Upper Keys and Lower Keys ROGO subareas s.

(3) *Eligibility per tier designation*. Only applications for developments within Tier III designated areas shall be eligible for allocation by way of the NROGO bank.

(4) *NROGO subarea account reserves*. The general (joint) account shall maintain reserves of 20,000 square feet for the Upper Keys and Lower Keys NROGO subarea. The Big Pine/No Name Key subarea account is not required to maintain a reserve.

(5) *Noncompetitive applications*. If the total amount of nonresidential floor area requested in a single application or cumulatively in multiple applications by separate applicants is equal to or less than the amount available in the applicable NROGO bank (excluding reserved floor area) account, the Planning Commission may grant the total amount of nonresidential floor area requested in the application(s) to the applicant(s).

(6) *Competitive applications.* If the total amount of nonresidential floor area requested in a single application or cumulatively in multiple applications by separate applicants is greater than that the total amount available in the applicable NROGO bank accounts (excluding reserved floor area), the Planning Director shall submit an evaluation report to the Planning Commission indicating the evaluation rankings. The Planning Commission shall award available nonresidential floor area in the applicable NROGO bank account (excluding reserved floor area) to the applicant with most points pursuant to Section 138-55. If the highest scoring applicant does not request the entire amount available in an NROGO bank account, the Planning Commission shall award the remaining available nonresidential floor area in the applicable NROGO bank account (excluding reserved floor area) to the application with the second highest score and so on until the NROGO bank reaches its balance (excluding reserves).

(7) *Single application requesting more than the balance in an NROGO bank account.* If there are not any competing applications, the Planning Commission may grant the total amount of nonresidential floor area available in an NROGO bank account (excluding reserved floor area) to the applicant and require the applicant to acquire the remaining nonresidential floor area through the NROGO permit allocation system.

(8) *De minimis applications.* Square footage for de minimis applications may be deducted from the annual NROGO allocation or the NROGO bank. Nonresidential floor area permitted via de minimis shall be deducted from the NROGO subarea account in which the property is located.

(9) *Testimony*. The public, including but not limited to applicants, shall be permitted to testify at the public hearing. Applicants may offer testimony about their applications or other applications; however, in no event may an applicant offer modifications to an application that could change the points awarded or the ranking of the application.

(10) *Decision by the Planning Commission*. At the conclusion of the public hearing, the Planning Commission may:

a. If applicable, move to accept the evaluation rankings as submitted by the Planning Director;
b. If applicable, move to accept the evaluation rankings as may be modified as a result of the public hearing;
c. Move to continue the public hearing to take additional public testimony;
d. Move to close the public hearing but to defer action on the evaluation rankings pending receipt of additional information; and
e. Move to reject the evaluation rankings.

Within 60 days of the public hearing, the Planning Commission shall render its final decision on an application for an allocation by way of the NROGO bank by resolution. If

an approval, the resolution shall be issued and pass all relevant appeal periods prior to issuance of a building permit requiring the nonresidential floor area awarded by the resolution.

(11) *Opening balances*. Opening balances for the NROGO bank accounts as of NROGO Year 22 (July 13, 2013). The opening balances for the NROGO bank accounts shall be determined and calculated by the Planning and Environmental Resources Department based on available and unused annual nonresidential floor area from NROGO Years 10 through 21.

(12) *Joint Account*. Commencing NROGO Year 23 (July 13, 2014), on the opening date of each NROGO Year, excluding the reserves provided for in subsection (e)(4), the non-reserve balances of the general (joint) bank account for the Upper Keys ROGO subarea and the Lower Keys ROGO subarea shall be returned to the general or joint account for award within the Upper Keys and Lower Keys ROGO subareas.

(13) *Notification to the general public of the availability of the NROGO account balances*. For each of the four Planning Commission public hearings in a given NROGO Year in which NROGO allocations may be awarded, the Planning and Environmental Resources Department shall provide a detailed report to the Planning Commission and general public providing the exact balances of nonresidential floor area that exist within the NROGO bank. In addition, these balances shall be provided in the newspaper advertisements for the Planning Commission public hearings (as required by Section 110-5) in which NROGO allocation awards may be awarded.

Sec. 138-54. Administrative Relief.

(a) *Eligibility*. An applicant is eligible for administrative relief under the provisions of this section if all the following criteria are met:

(1) The applicant has complied with all requirements of the nonresidential permit allocation system;
(2) The application has been denied an allocation award for four successive years (first 16 consecutive quarterly allocation periods) in the NROGO Allocation System;
(3) The proposed development otherwise meets all applicable county, state, and federal regulations;
(4) The subject application has not been withdrawn;
(5) The applicant has complied with all the requirements of the NROGO Allocation System;
(6) The applicant has followed the procedures for administrative relief; and
(7) The applicant has not received an allocation award.

(b) *Application*. An application for administrative relief shall be made on a form prescribed by the Planning Director and may be filed with the Planning and Environmental Resources

Department no earlier than the conclusion of the fourth allocation period and no later than 180 days following the close of the fourth annual allocation period.

(c) *Waiver of rights*. Failure to file an application shall constitute a waiver of any rights under this section to assert that the subject property has been taken by the county without payment of just compensation as a result of the nonresidential floor area allocation system.

(d) *Exceptions*. Monroe County shall preclude the granting of administrative relief in the form of the issuance of a building permit for lands within the Florida Forever targeted acquisition or Tier I land areas unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel cannot be purchased for conservation purposes by any county, state or federal agency or any private entity. The county shall routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least six months prior to the deadline for administrative relief.

(e) *Processing and review by Planning Director*. Upon the filing of an application for administrative relief, the Planning Director shall prepare a written report with recommendation and forward the report to the BOCC along with all relevant files and records relating to the subject application. The Planning Director shall advertise and schedule a public hearing for consideration of the application by the BOCC.

(f) *Public hearing*. At a public hearing, the BOCC may review the relevant application and application evaluation ranking, taking testimony from county staff and others as may be necessary and review documentary evidence submitted by the applicant.

(g) *BOCC action*. At the conclusion of the public hearing, the BOCC may take any or a combination of the following actions:

(1) Offer to purchase the property at fair market value as the preferred action if the property is location within:

a. 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);
b. A designated Tier II area (Big Pine Key and No Name Key);
c. A designated Tier III-A area (special protection area); or
d. A designated Tier III area on a nonwaterfront lot for affordable housing.

(2) Grant the applicant an allocation award for all or part of the nonresidential floor area requested in the next allocation award as the preferred option for buildable properties not meeting the criteria in subsection (g)(1) of this section.

(3) Suggest such other relief as may be necessary and appropriate.

Sec. 138-55. Evaluation Criteria (NROGO).

(a) *Evaluation point values*. The following point values established are to be applied cumulatively except where otherwise specified. For all applications entering the Nonresidential Permit Allocation system after July 13, 2016, the following points and criteria shall apply:

(1) ***Tier designation*.** Utilizing the Tier System for land classification, the following points shall be assigned to allocation applications for proposed nonresidential development in a manner that encourages development of infill in predominately developed areas with existing infrastructure, commercial concentrations, and few sensitive environmental features, and discourages development in areas with environmentally sensitive upland habitat, which are targeted for acquisition and the retirement of development rights for resource conservation and protection:

Point Assignment:	***Criteria (Outside Big Pine Key and No Name Key)*:**
0	Proposes new nonresidential development within an area designated Tier I [Natural Area].
+4	Proposes expansion of an existing, lawfully established nonresidential development regardless of Tier, with no further clearing of any native upland vegetation.
+10	Proposes new nonresidential development that will result in the clearing of any upland native vegetation within a Special Protection Area in Tier III-A.
+20	Proposes new nonresidential development within an area designated Tier III [Infill Area].

Point Assignment	***Criteria (Within Big Pine Key and No Name Key):***
0	Proposes new nonresidential development within an area designated Tier I [Natural Area]
+10	Proposes new nonresidential development within an area designated Tier II [Transition and Sprawl Reduction Area on Big Pine Key and No Name Key].
+20	Proposes new nonresidential development within an area designated Tier III on Big Pine Key and No Name Key.
+4	Proposes expansion of an existing, lawfully established nonresidential development regardless of Tier, with no further clearing of any native upland vegetation, located within the U.S. 1 Corridor Area and the

	commercial community center overlay in the Big Pine Key and No Name Key Livable CommuniKeys Community Master Plan.

(2) ***Wetlands.*** The following points shall be assigned to allocation applications on Tier III parcels which have sufficient upland to be buildable (min of 2,000 sq.ft. of uplands) but also contain wetlands which require 100 percent open space pursuant to the Monroe County Comprehensive Plan and that are located adjacent or contiguous to Tier I properties.

Point Assignment	***Criteria***
-3	Tier III parcels adjacent or contiguous to Tier I properties and containing 50% or less of the following: 1. submerged lands 2. mangroves (excluding tidally inundated mangrove shoreline fringes) 3. salt ponds 4. fresh water wetlands 5. fresh water ponds 6. undisturbed salt marsh and buttonwood wetlands
-5	Tier III parcels adjacent or contiguous to Tier I properties and containing more than 50% of the following: 1. submerged lands 2. mangroves (excluding tidally inundated mangrove shoreline fringes) 3. salt ponds 4. fresh water wetlands 5. fresh water ponds 6. undisturbed salt marsh and buttonwood wetlands
Notes:	
Adjacent means land sharing a boundary with another parcel of land. An intervening road, right-of-way, or easement shall not destroy the adjacency of the two parcels, except for U.S. 1.	

Contiguous means a sharing of a common border at more than a single point of intersection. Contiguity is not interrupted by utility easements.
Subsection (2) applies to new applications for Tier III parcels entering the permit allocation system after January 13, 2013.

(3) ***Land dedication*.** The following points shall be assigned to allocation applications to encourage the voluntary dedication of vacant, buildable land within Tier I, Tier II (Big Pine Key and No Name Key), and Tier III-A (Special Protection Areas (SPA)) designated areas and parcels which contain undisturbed wetlands for the purposes of conservation, resource protection, restoration or density reduction and, if located in Tier III outside of Special Protection Areas, for the purpose of providing land for the retirement of development rights or affordable housing where appropriate. Applicants can utilize lands donated pursuant to Policy 101.5.26; however, submerged lands (inundated by water) shall not be eligible for land dedication.

***Point Assignment*:**	***Criteria (Outside Big Pine Key and No Name Key):***
+4 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III for affordable housing, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot which meets the aforementioned requirements will earn the additional points as specified.
+5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+4 for each parcel	Proposes dedication to Monroe County of one vacant parcel with a minimum of 2,000 square feet of uplands, designated as Tier III for the retirement of development rights. Each additional vacant parcel that meets the aforementioned requirements will earn points as specified.
+1 for each platted lot	Proposes dedication to Monroe County of a vacant, legally platted lot within a Tier I area, designated as Residential Low containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+0.5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot within a Tier I area, designated as Residential Conservation containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the

	aforementioned requirements will earn points as specified.
+2.5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, within a Tier I area and containing a minimum of 2,000 square feet of uplands and not designated as Residential Conservation or Residential Low. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier I area containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+4 for each acre	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier I area containing a minimum of 2,000 square feet of uplands. Each additional one (1) acres of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot which contains undisturbed wetlands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III-A (Special Protection Area-SPA) containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier III-A area containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+3 for each parcel	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier III-A area containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
Additional Requirements:	
	A statutory warranty deed that conveys the dedicated property to the county shall be approved by the Planning Director and County Attorney and recorded in the office of the clerk of the county prior

	to the issuance of any building permit pursuant to an allocation award. Other documents related to the approval of the land dedication may include, but are not limited to, affidavit of no encumbrance(s), entity affidavit, subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

***Point Assignment*:**	***Criteria (Within Big Pine Key and No Name Key):***
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier I on Big Pine Key and No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+4 for each acre	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier I area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier I area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier II on Big Pine Key and No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
+3 for each acre	Proposes dedication to Monroe County of at least one (1) acre of vacant, unplatted land located within a Tier II area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional one (1) acre of vacant, unplatted land that meets the aforementioned requirements will earn points as specified.
+2 for each parcel	Proposes dedication to Monroe County less than one (1) acre of vacant, unplatted land located within a Tier II area on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional parcel with vacant, unplatted land that

	meets the aforementioned requirements will earn points as specified.
Point Assignment:	***Criteria: (Within Big Pine Key and No Name Key)***
+5 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot, designated as Tier III on Big Pine Key or No Name Key, containing a minimum of 2,000 square feet of uplands. Each additional vacant, legally platted lot that meets the aforementioned requirements.
+4 for each parcel	Proposes dedication to Monroe County of one vacant parcel with a minimum of 2,000 square feet of uplands, designated as Tier III for the retirement of development rights. Each additional vacant parcel that meets the aforementioned requirements will earn points as specified.
+2 for each platted lot	Proposes dedication to Monroe County of one (1) vacant, legally platted lot on Big Pine Key or No Name Key which contains undisturbed wetlands. Each additional vacant, legally platted lot that meets the aforementioned requirements will earn points as specified.
Additional Requirements:	
	A statutory warranty deed that conveys the dedicated property to the county shall be approved by the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award. Other documents related to the approval of the land dedication may include, but are not limited to, affidavit of no encumbrance(s), entity affidavit, subject to the approval of the Planning Director and County Attorney and recorded in the office of the clerk of the county prior to the issuance of any building permit pursuant to an allocation award.

(4) ***Special Flood Hazard Area.*** The following points shall be assigned to allocation applications to discourage development within high risk special flood hazard zones:

***Point Assignment*:**	***Criteria*:**
-6	Proposes a structure requiring an allocation within a "V" zone on the FEMA Flood Insurance Rate Map.
-4	An application for which development is proposed within a CBRS unit.

(5) ***Perseverance Points.***

Point Assignment:	***Criteria:***
+1 for four years +0.5 after four years	For parcels designated Tier I, II or III-A, one (1) point shall be awarded for each year that the allocation application remains in the allocation system up to four (4) years. After four (4) years, the application shall be awarded 0.5 points for each year the application remains in the system.
+2 for four years +1 after four years	For parcels designated Tier III, two (2) points shall be awarded for each year that the allocation application remains in the allocation system up to four (4) years. After four (4) years, the application shall be awarded one (1) point for each year the application remains in the system.
Applications entering the NROGO system after July 13, 2016, shall receive perseverance points as listed above.	

(6) ***Highway Access.*** The following points shall be assigned to allocation applications to encourage connections between commercial uses and reduction of the need for trips and access onto U.S. Highway 1:

***Point Assignment*:**	***Criteria*:**
+3	The development eliminates an existing driveway on or access-way to U.S. Highway 1.
+2	The development provides no new driveway or access-way on U.S. Highway 1 and provides a connection between commercial uses.

(7) ***Landscaping, Energy and Water Conservation.*** The following points shall be assigned to allocation applications on lands designated as Tier III to encourage the planting of native vegetation and promote water conservation and increased energy efficiency:

***Point Assignment*:**	***Criteria*:**
+1	The project provides a total of two hundred percent (200%) of the number of native landscape plants required by the Land Development Code within landscaped bufferyards and parking areas.
+1	Twenty-five percent (25%) of the native plants provided to achieve the point award above or provided to meet the landscaped bufferyard and parking area requirements of the Land Development Code are listed as threatened or endangered plants native to the Florida Keys.
+1	Project landscaping is designed for water conservation including the collection and direction of rainfall to landscaped areas, or the application of re-used wastewater for watering landscape plants.
+3	Proposes a commercial structure designed according to and certified to the standards of a sustainable building rating or national model green building code.
+1	Includes installation of a solar photovoltaic collection system, a minimum of 3KW in size or the equivalent in other renewable energy systems.*
+0.5	Includes installation of one or both of the following technologies:* a. Ductless air conditioning system. b. High efficiency chillers.
+1	Includes installation of a permanent concrete cistern with a minimum capacity of 2,000 gallons.
+2	Includes the installation of a gray water reuse system, meeting the requirements of the Florida Building Code.
**** The systems must be maintained for a minimum of five years from C.O. unless replaced with a system that provides a functional equivalent or increased energy or water savings.***	

(8) ***Central Wastewater System Availability*.*** The following points shall be assigned to allocation applications to direct development to areas with central sewer:

Point Assignment:	***Criteria:***
+4*	Proposes development required to be connected to a central wastewater treatment system that meets the AWT treatment standards established by Florida Legislature and Policy 901.1.1.
*These points shall not apply to parcels within a CBRS system unit.	

(9) ***Employee Housing***. The following points, up to a maximum of four (4), shall be assigned to allocation applications, which includes new employee housing units:

Point Assignment:	***Criteria:***
+2	Proposes a new employee housing unit which is located on the same parcel with a nonresidential use.
Additional Requirements:	
	1. The employee housing unit shall be required to meet the applicable provisions of Section 139-1.
	2. The proposed employee housing unit shall be included in the development approval for the nonresidential development proposed in the allocation application.
	3. A certificate of occupancy shall be granted for the nonresidential development authorized by the allocation award, but shall not be issued prior to the certificate of occupancy for the employee housing units.
	4. Each additional NROGO application which increases the number of proposed employee housing unit may receive additional points. The same employee housing unit included in a previous NROGO application cannot earn additional points in subsequent applications.

(10) ***Payment to the Land Acquisition Fund***. Up to two (2) whole points shall be awarded for a monetary payment by the applicant to the County's land acquisition fund for the purchase of lands for conservation, and retirement of development rights. The monetary value of each point shall be set annually by the County based upon the estimated average fair market value of vacant, privately-owned, buildable IS/URM zoned, platted lots.

(11) ***Community Centers.*** The following points shall be assigned to allocation applications to encourage, nonresidential development within an areas designated as a Community Center in an adopted Livable CommuniKeys Plan.

Point Assignment:	***Criteria:***
+5	Proposes nonresidential development within an area designated as a Community Center.

Sec. 138-56. Appeals.

(a) An appeal from the decision of the Planning Commission on an NROGO allocation shall be made to the BOCC. The notice of such appeal shall be in a form prescribed by the

Planning Director and must be filed with the Planning Director within 20 working days of the Planning Commission's decision. Upon the filing of an appeal, the Planning Commission's secretary will forward to the board all relevant files and records relating to the matter. Failure to file an appeal with the BOCC shall constitute a waiver of any rights under this chapter to further dispute the decision of the Planning Commission.

(b) The filing of an appeal shall not stay either the action of the Planning Commission or the action of the director of planning.

(c) If, as a result of a successful appeal, additional allocation awards are to be made, the BOCC shall instruct the Planning Director as to how many nonresidential floor space applications shall receive allocation awards, when such allocation awards are to be made and what effect such additional allocation awards will have on the current annual allocation for nonresidential floor area. To ensure that the allocations set forth in Section 138-51 are not exceeded, the Planning Director shall inform the Planning Commission of the results of the appeal and the disposition of any additional allocation awards.

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Chapter 139 AFFORDABLE AND EMPLOYEE HOUSING

Sec. 139-1. Affordable and Employee Housing; Administration.

(a) Generally.

(1) Notwithstanding the density limitations in Section 130-157, the owner of a parcel of land shall be entitled to:

a. Develop affordable and employee housing as defined in Section 101-1, on parcels of land classified as Urban Residential (UR) at an intensity up to a maximum net residential density of 25 dwelling units per acre and on parcels of land classified as Mixed Use (MU) at an intensity up to a maximum net residential density of 18 dwelling units per acre.

b. Develop affordable and employee housing, as defined in Section 101-1, on parcels of land classified as Suburban Commercial (SC) at an intensity up to a maximum net residential density of 18 dwelling units per acre and on parcels of land classified as Urban Residential (UR) at an intensity up to a maximum net residential density of 25 dwelling units per acre.

c. Develop market rate housing, as defined in Section 101-1, as part of an affordable or employee housing project in accordance with subsection (a)(8) of this section, provided that on parcels of land classified as Urban Residential (UR), the maximum net residential density shall not be greater than 18 dwelling units per acre.

(2) The maximum net residential density allowed per district and by this section shall not require Transferable Development Rights (TDR) for affordable and employee housing and market rate housing developed in accordance with subsection (a)(8) of this section.

(3) Market rate housing developed in accordance with subsection (a)(8) below shall be eligible to receive points pursuant to Section 138-28(a)(6).

(4) The requirements of this Land Development Code for the provision of impact fees shall be waived for affordable and employee housing and any market rate housing developed in accordance with subsection (a)(8) of this section.

(5) Notwithstanding the provisions of this article, when calculating density, any existing lawfully established or proposed affordable or employee housing on a parcel and the floor area thereof shall be excluded from the calculation of the total gross nonresidential floor area development that may be lawfully established on the parcel, provided, however, that the total residential density allowed on the site shall not exceed the maximum net density for affordable and employee housing.

(6) In order for the owner of a parcel of land to be entitled to the incentives for affordable or employee housing outlined in this section and Chapter 138, Articles II and III, the owner must ensure that:

a. The use of the affordable housing dwelling unit is restricted to households that meet the adjusted gross annual income limits for median-income as defined in Section 101-1;
b. Except as provided for under the special provisions for employer-owned rental housing as set forth under subsection (a)(6)k of this section, if the affordable housing dwelling unit is designed for employee housing, the use of the dwelling is restricted to households that derive at least 70 percent of their household income from gainful employment in the county and meet the adjusted gross annual income limits for median income as defined in Section 101-1.
c. The use of the affordable or employee dwelling unit is restricted for the period specified in Section 101-1.
d. Tourist housing use or vacation rental use of affordable or employee housing units is prohibited.
e. The parcel of land proposed for development of affordable or employee housing shall only be located within a tier III designated area or, within a tier III-A (special protection area) designated area that does not propose the clearing of any portion of an upland native habitat patch of one acre or greater in area.
f. At the time of sale of an owner-occupied affordable unit, the total income of households eligible to purchase shall not exceed 120 percent of the median household income for the county. However, a unit within a class of affordable housing eligibility may only be sold to a household within that same class, i.e., a median income household that purchased a home within this category must sell the home to a qualifying household within the median income category;
g. During occupancy of any affordable housing rental unit, not otherwise limited by state or federal statute or rule concerning household income, a household's annual income may increase to an amount not to exceed 140 percent of the median household income for the county. If the income of the lessee exceeds this amount, the tenant's occupancy shall terminate at the end of the existing lease term. The maximum lease for any term shall be three years or 36 months;
h. Affordable housing projects shall be no greater than 20 units unless approved by resolution of the county Planning Commission. The Planning Commission's decision may be appealed to the BOCC using the procedures described in Section 102-185, with the BOCC serving as the appellate body for the purpose of this section only;
i. When establishing a rental and sales amount, the county shall assume family size as indicated in the table below. This section shall not be used to establish the maximum number of individuals who actually live in the unit. This table shall be used in conjunction with the eligibility requirements created by Section 101-1:

Size of Unit	Assumed Family Size	Minimum Occupancy
Efficiency (no separate bedroom)	1	1
One bedroom	2	1
Two bedroom	3	2
Three bedroom	4	3
Four or more bedroom	5	1 per bedroom

j. Except for tenants of employer-owned rental housing, as set forth in subsection (a)(6)k. of this section, the income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the county, only the highest 60 hours of the combined employment hours shall be counted, which shall be considered to be 75 percent of the adjusted gross income. The income of dependents regardless of age shall not be counted in calculating a household's income; and

k. In the special case of employer-owned rental housing, as defined in Section 101-1, employees shall be eligible as tenants of the affordable rental housing, if the income of each tenant, as determined following the requirements in subsection (a)(6)j. of this section, is not more than the 80 percent of the median income adjusted gross income for households within the county. The tenants of this affordable employee housing shall be required to derive at least 70 percent of their income from within the county. The maximum occupancy of employer-owned rental housing for employees shall be no more than two tenants per bedroom; with a maximum of three bedrooms per unit. The total monthly lease charged tenants for each dwelling unit shall not exceed 30 percent of the median adjusted gross annual income for households within the county, divided by 12.

(7) Commercial apartment dwelling units, as defined in Section 101-1, shall only be eligible for the incentives outlined in this section if they meet the requirements of subsection (a)(6) of this section for employee housing.

(8) If an affordable or employee housing project or an eligible commercial apartment designated for employee housing contains at least five dwelling units, a maximum of 20 percent of these units may be developed as market rate housing dwelling units. The owner of a parcel of land must develop the market rate housing dwelling units as an integral part of an affordable or employee housing project. In order for the market rate housing dwelling units to be eligible for incentives outlined in this section, the owner must ensure that:

a. The use of the market rate housing dwelling unit is restricted for a period of at least 30 years to households that derive at least 70 percent of their household income from gainful employment in the county; and

b. Tourist housing use and vacation rental use of the market rate dwelling unit is prohibited.

(b) Inclusionary housing requirements.

(1) Purpose and intent. The purpose of this subsection (b), consistent with Goal 601 of the Comprehensive Plan, is to ensure that the need for affordable housing is not exacerbated by new residential development and redevelopment of existing affordable housing stock. The intent of this subsection is to protect the existing affordable housing stock, to permit owners of mobile homes and mobile home spaces to continue established mobile home uses consistent with current building and safety standards and regulations and to ensure that, as residential development, redevelopment and mobile home conversions occur, Comprehensive Plan policies regarding affordable housing are implemented.

(2) Applicability. Except as provided in subsection (b)(3) of this section, the inclusionary housing requirements set forth below shall apply. Determinations regarding the applicability of this subsection shall be made by the Planning Director. For purposes of calculating the number of affordable units required by this subsection, density bonuses shall not be counted and only fractional requirements equal to or greater than .5 shall be rounded up to the nearest whole number.

a. Residential developments, other than mobile home or mobile home spaces covered by subsection (b)(2)b. of this section, that result in the development or redevelopment of three or more dwelling units on a parcel or contiguous parcels shall be required to develop or redevelop at least 30 percent of the residential units as affordable housing units. Residential development or redevelopment of three units on a parcel or contiguous parcels shall require that one developed or redeveloped unit be an affordable housing unit. For the purpose of this section, and notwithstanding subsection (b)(2)b. of this section, any dwelling unit exceeding the number of lawfully established dwelling units on site, which are created by either a TRE or ROGO allocation award, shall be considered developed units.

b. The removal and replacement with other types of dwelling units of ten or more mobile homes that are located on a parcel or contiguous parcels and/or the conversion of mobile home spaces located on a parcel or contiguous parcels into a use other than mobile homes shall be required to include in the development or redevelopment a number of affordable housing units equal to at least 30 percent of the number of existing units being removed and replaced or converted from mobile home use or, in the event the new use is nonresidential, to develop affordable housing units at least equal in number to 30 percent of the number of mobile homes or mobile home spaces being converted to other than mobile home use. Removal and replacement or conversion to a different use of ten mobile homes or mobile home spaces on a parcel or contiguous parcels shall require that three units be replaced or converted to deed-restricted affordable housing.

c. In calculating the number of affordable housing units required for a particular project, or phase of a project, all dwelling units proposed for development or

redevelopment or mobile homes or mobile home spaces to be converted from mobile home use since the effective date of the ordinance from which this section is derived shall be counted. In phased projects, the affordable housing requirements shall be proportionally allocated among the phases. If a subsequent development or redevelopment is proposed following a prior development approved on the same property as it existed as of the effective date of the ordinance from which this section is derived, which prior development did not meet the compliance thresholds set forth in subsection (b)(2)a. or (b)(2)b. of this section, the requirements of subsection (b)(2)a. or (b)(2)b. of this section shall be met as part of the subsequent development for all units proposed for development or redevelopment after the effective date of the ordinance from which this section is derived.

(3) Exemptions and waivers.

a. The following uses shall be exempt from the inclusionary housing requirements set forth in subsection (b)(2)a. of this section: affordable housing, employee housing, nursing homes, or assisted care living facilities.

b. The BOCC may reduce, adjust, or waive the requirements set forth in this subsection (b) where, based on specific findings of fact, the board concludes, with respect to any developer or property owner, that:

1. Strict application of the requirements would produce a result inconsistent with the Comprehensive Plan or the purpose and intent of this subsection;
2. Due to the nature of the proposed residential development, the development furthers Comprehensive Plan policies and the purpose and intent of this subsection through means other than strict compliance with the requirements set forth herein;
3. The developer or property owner demonstrates an absence of any reasonable relationship between the impact of the proposed residential development and requirements of this subsection (b); or
4. The strict application with the requirements set forth herein would improperly deprive or deny the developer or property owner of constitutional or statutory rights.

c. Any developer or property owner who believes that he may be eligible for relief from the strict application of this section may petition the BOCC for relief under this subsection (b)(3) of this section. Any petitioner for relief hereunder shall provide evidentiary and legal justification for any reduction, adjustment or waiver of any requirements under this section.

(4) Alternate compliance.

a. Compliance with this subsection may be achieved through the deed-restriction of existing dwelling units requiring that the affected units remain subject to the county's affordable housing restrictions for a period not less than the period prescribed in subsection (5)(c)3., below, according to administrative procedures established by the county.

The following example is set forth to illustrate potential application options:

Example: Owner/developer has 100 development rights

- Option 1: Owner/developer may build up to 70 market rate units and shall build 30 affordable units (using conventional compliance method.) The owner's 100 development rights yield a ratio of 70 market rate units and 30 affordable units.
- Option 2: Owner/developer may build up to 70 market rate units and shall purchase and deed-restrict 30 existing market rate units (in lieu of building 30 new affordable units.) The owner's 100 development rights again yield a ratio of 70 market rate units to 30 affordable units.
- Option 3: Owner/developer may build up to 100 new market rates. If the developer wishes to use all 100 development rights for market rate development, his inclusionary compliance requirement to purchase and deed-restrict existing market rate units increases, and in this case for example, calculates to 43 total affordable units. (The owner's 100 development rights yield a ratio of 100 market rate units to 43 affordable units, which is equivalent to the ratio of 70 market rates to 30 affordables: 100/43 = 70/30.)

b. In-lieu fees. The developer of a project subject to the requirements of this subsection (b) may contribute a fee in-lieu of the inclusionary housing requirements for all or a percentage of the affordable housing units required by subsection (b)(2). The developer shall pay per unit in-lieu fees the current maximum sales price for a one-bedroom affordable unit as established under Section 139-1(a). All in-lieu fees shall be deposited into the affordable housing trust fund and spent solely for the purposes allowed for that fund. The developer, along with any corresponding in-lieu fees, shall transfer to the county ownership of the associated ROGO-exempt development rights for any affordable unit(s) required by this section for which the in-lieu fee option is used.

c. Land donation. Upon the acceptance of the BOCC of a proposed onsite or offsite parcel (or parcels), a developer may satisfy the requirements of this subsection by donating to the county, or other agency or not-for-profit organization approved by the board, one IS or URM lot for each unit required

but not provided through actual construction or in-lieu fees (or a parcel or parcels of land zoned other than IS or URM as long as the donated parcel(s) will support the development of an appropriate number of affordable units). Lots or other parcels so provided shall not be subject to environmental or other constraints that would prohibit immediate construction of affordable housing units. The developer, along with any corresponding donated parcel(s), shall transfer to the county ownership of the associated ROGO allocations or ROGO-exempt development rights for any affordable unit(s) required under this section.

(5) Applicable standards.

a. Incentives. All incentives and bonuses provided by the land development and other regulations for the construction of affordable housing shall be available to builders of affordable housing provided pursuant to this subsection (b) including, but not limited to, density and floor area ratio bonuses, residential ROGO allocation set asides and points, and impact fee waivers.

b. Developer financial responsibility.

1. If a developer does not elect to meet the requirements of subsection (b)(2) of this section through alternative compliance as set forth in subsection (b)(4) of this section, or obtain approval for an adjustment to, a partial exemption from or a waiver of strict compliance pursuant to subsection (b)(3) of this section, the developer must post a bond equivalent to 110 percent of the in-lieu fees that otherwise would have been required through the in-lieu alternate compliance option prior to the issuance of a building permit for any market rate units. The county shall retain any bond money or guaranties in escrow until the affordable housing is completed, or for a period of three years, whichever comes first. Upon the issuance of certificates of occupancy for the affordable housing units, the county shall release to the developer any bonds or guaranties relating to the portion of the inclusionary housing requirement satisfied. If the developer has not satisfied the requirements of this section by completing the required affordable housing units within three years, all or the corresponding portion of the bond funds shall be forfeited to the affordable housing trust fund.
2. If the applicant elects to pursue alternative compliance as set forth in subsection (b)(4) of this section, any in-lieu fees must be paid or parcels donated prior to the issuance of a building permit for any market rate unit.

c. Standards. Affordable housing provided pursuant to subsection (b)(2) of this section shall comply with the standards set forth below and applications for development projects subject to these requirements and developers and property

owners shall provide to the county information and necessary legal assurances to demonstrate current and continued compliance with these provisions, consistent with the applicable enforcement mechanisms set forth in subsection (f) of this section, as amended or supplemented from time to time. The county may institute any appropriate legal action necessary to ensure compliance with this subsection.

1. Affordable housing units required pursuant to subsection (b)(2) of this section are restricted to sales prices and annual rental amounts for households that shall not exceed the adjusted gross annual income limits for moderate-income owner-occupied or rental housing, as defined in Section 101-1;
2. Affordable housing units may be sold or rented only to persons whose total household income does not exceed the adjusted gross annual income limits for moderate-income as defined in Section 101-1;
3. Except as specifically provided otherwise herein, affordable housing dwelling units are restricted for a period of 99 years to households that meet the requirements of subsection (b)(5)c.2. of this section;
4. Affordable housing units provided pursuant to subsection (b)(2) of this section may be provided on-site, off-site or through linkage with another off-site project as provided in subsection (c) of this section;
5. Affordable housing units may not be used for tourist housing or vacation rental use;
6. Each affordable unit provided pursuant to subsection (b)(2) of this section shall contain a minimum of 400 square feet of habitable floor area and the average enclosed habitable floor area of all units so provided shall be at least 700 square feet;
7. Each affordable unit provided pursuant to subsection (b)(2) shall contain a minimum of 400 square feet of habitable floor area; and during occupancy of any affordable housing rental unit, not otherwise limited by state or federal statute or rule concerning household income, a lessee household's annual income may increase to an amount not to exceed 140 percent of the median household income for the county, to be annually verified. If the income of the lessee household exceeds this amount, the occupancy shall terminate at the end of the existing lease term. The maximum lease for any term shall be three years or 36 months;
8. When determining eligibility criteria, the county shall assume family size as indicated in the table set forth in subsection (a)(6)i. of this section. That table shall not be used to establish the maximum number of individuals who actually live in the unit, but shall be used in conjunction with the eligibility requirements created by the definition of "affordable housing" in Section 101-1;
9. The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each

unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the county, only the highest 60 hours of the combined employment hours shall be counted, which shall be considered to be 75 percent of the adjusted gross income. The income of dependents regardless of age shall not be counted in calculating a household's income; and

10. The county will not issue certificates of occupancy for market rate units associated with development or redevelopment projects subject to the provisions of this subsection (b) unless and until certificates of occupancy have been issued for required affordable housing units, lot donations are complete, or in-lieu fees have been paid as provided herein.

(6) Monitoring and review.

The requirements of this subsection (b) shall be monitored to ensure effective and equitable application. Every two years following the effective date of the ordinance from which this section is derived, the planning director shall provide to the BOCC a report describing the impact of this subsection on the provision of affordable housing and other market or socioeconomic conditions influencing or being influenced by these requirements. Issues such as affordability thresholds, inclusionary requirements, and the impacts of these provisions on the affordable housing inventory and housing needs in the county shall be addressed, in addition to other matters deemed relevant by the director.

(c) Linkage of projects.

Two or more development projects that are required to provide affordable housing may be linked to allow the affordable housing requirement of one development project to be built at the site of another project, so long as the affordable housing requirement of the latter development is fulfilled as well. The project containing the affordable units must be built either before or simultaneously with the project without, or with fewer than, the required affordable units. Sequencing of construction of the affordable component of linked projects may be the subject of the planning department or the planning commission's approval of a project. In addition, if a developer builds more than the required number of affordable units at a development site, this development project may be linked with a subsequent development project to allow compliance with the subsequent development's affordable unit requirement. The linkage must be supplied by the developer to the planning commission at the time of the subsequent development's conditional use approval. Finally, all linkages under this subsection may occur between sites within the county and in the cities of Key West, Marathon and Islamorada, subject to an interlocal agreement, where appropriate; however, linkage must occur within the same geographic planning area, i.e., lower middle and upper keys. All linkages must be approved via a covenant running in favor of the county, and if the linkage project lies within a city, also in favor of that city. The covenant shall be placed upon two or more projects linked, stating how the

requirements for affordable housing are met for each project. The covenant shall be approved by the BOCC and, if applicable, the participating municipality.

(d) Affordable housing trust fund.

The affordable housing trust fund (referred to as the "trust fund") is established. The trust fund shall be maintained with funds earmarked for the purposes of furthering affordable housing initiatives in municipalities and unincorporated areas of the county. Monies deposited into the trust fund shall not be commingled with general operating funds of the county. The trust fund shall be used only for the following:

(1) Financial aid to developers as project grants for affordable housing construction;
(2) Financial aid to homebuyers as mortgage assistance, including, but not limited to, loans or grants for down payment assistance;
(3) Financial incentives for the conversion of transient units to affordable residential units;
(4) Direct investment in or leveraging housing affordability through site acquisition, housing development and housing conservation; or
(5) Other affordable housing purposes as may be established by resolution of the BOCC, which shall act as trustees for the fund. The BOCC may enter into agreements or make grants relating to the use of trust funds with or to the county housing authority or other local government land or housing departments or agencies, a qualified community housing development organization or nonprofit or for-profit developer of affordable or employee housing, or a municipality within the county.

(e) Community housing development organization.

The BOCC may establish a nonprofit community housing development organization (CHDO), pursuant to federal regulations governing such organizations, to serve as developer of affordable housing units on county-owned property, including or located in the municipalities of the county, upon interlocal agreement. In such event, the county may delegate to the community housing development organization all or partial administration of the affordable housing trust fund.

(f) Administration and compliance.

(1) Before any building permit may be issued for any structure, portion or phase of a project subject to this section, a restrictive covenant shall be approved by the Assistant County Administrator 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:

a. The covenants for any affordable or employee housing units shall be effective for a period of at least 99 years.

b. 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.

(2) Restrictive covenants for housing subject to the provisions of this section shall be filed that require compliance with the following:

a. Restricting affordable housing dwelling units to households meeting the income requirements of subsection (a)(6)a. of this section;
b. Restricting employee housing dwelling units to households meeting the income and employment requirements of subsection (a)(6)b. of this section;
c. Restricting market rate housing dwelling units to households meeting the employment requirements of subsection (a)(8)a. of this section; and
d. Prohibiting tourist housing use or vacation rental use of any housing developed under the provisions of this section.

(3) The eligibility of a potential owner-occupier or renter of an affordable, employee or market rate housing dwelling unit, developed as part of an employee or affordable housing project, shall be determined by the planning department upon submittal of an affidavit of qualification to the planning department. The form of the affidavit shall be in a form prescribed by the planning department. This eligibility shall be determined by the planning department as follows:

a. At the time the potential owner either applies for affordable housing ROGO allocation, or applies to purchase a unit that used affordable housing ROGO allocation; or
b. At the time the potential renter applies to occupy a residential unit that used an affordable ROGO allocation.

(4) Except as provided in subsection (f)(5) of this section, the property owner of each affordable employee or market rate housing dwelling unit, developed as part of an affordable or employee housing project, shall be required to annually submit an affidavit of qualification to the planning department verifying that the applicable employment and income requirements of subsection (f)(2) of this section are met. The annual affidavit of qualification shall be in a form prescribed by the Planning Director and shall be filed by the property owner upon receiving written notification by certified mail from the planning department.

(5) The owner-occupant of an affordable, employee, or market rate housing dwelling unit, developed as part of an affordable or employee housing project, who has received a homestead exemption as provided for under the state statutes, is not required to submit an annual affidavit of qualification as required above in subsection (f)(4) of this section if that owner-occupant was qualified previously by the planning department. Prior to any change in ownership (including, but not limited to: sale,

assignment, devise, or otherwise), the owner-occupant shall be required to provide documentation to the planning department in a form prescribed by the planning director proving that the potential occupying household is eligible to occupy that unit prior to a change in ownership of the property**.**

(6) Failure to submit the required annual verification as required in subsection (f)(4) of this section or failure to provide documentation prior to change in ownership required in subsection (f)(5) of this section shall constitute a violation of the restrictive covenant, the conditions of the certificate of occupancy and this Land Development Code.

(7) The restrictive covenants for affordable and employee housing required under this section shall be approved by the Assistant County Administrator and county attorney prior to the recording of the covenant and issuance of any building permit.

(8) Upon written agreement between the Planning Director and an eligible governmental or nongovernmental entity, the Planning Director may authorize that entity to administer the eligibility and compliance requirements for the Planning and Environmental Resources Department under subsections (f)(3), (f)(4), (f)(5) and (f)(6) of this section. Under such an agreement, the eligible entity is authorized to qualify a potential owner-occupier or renter of affordable, employee, or market rate housing developed as part of an employee or affordable housing project, and annually verify the employment and/or income eligibility of tenants pursuant to subsection (f)(2) of this section. The entity shall still be required to provide the Planning and Environmental Resources Department, by January 1 of each year, a written certification verifying that tenants of each affordable, employee, or market rate housing meet the applicable employment and income requirements of subsection (f)(2) of this section. The following governmental and nongovernmental entities shall be eligible for this delegation of authority:

a. The county housing authority, not-for-profit community development organizations, pursuant to subsection (e) of this section, and other public entities established to provide affordable housing;
b. Private developers or other nongovernmental organizations participating in a federal/state housing financial assistance or tax credit program or receiving some form of direct financial assistance from the County; or
c. Nongovernmental organizations approved by the BOCC as affordable housing providers.

(9) Should an entity fail to satisfactorily fulfill the terms and conditions of the written agreement executed pursuant to subsection (f)(6) of this section, the Planning Director shall provide written notice to the subject entity to show cause why the agreement should not be terminated within 30 days. If the entity fails to respond or is unable to demonstrate to the satisfaction of the Planning Director that it is

meeting the terms and conditions of its agreement, the agreement may be terminated by the Planning Director within 30 days of the written notice.

(g) Interlocal affordable rate of growth allocation agreements.

The BOCC may authorize interlocal agreements between the County and the cities of Marathon, and Key West, and Islamorada, Village of Islands for the purpose of sharing residential rate of growth affordable housing allocations. The interlocal agreements may be based upon a specific project proposal within one or more jurisdictions or may be for a specific allocation of units on an annual basis, from the county to a municipality or from a municipality to the county. All allocations made available to a jurisdiction must meet the applicable affordable housing requirements of the receiving jurisdiction's land development regulations and affordable housing ordinances.

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Sec. 139-2. Affordable Housing Incentive Programs.

(a) Purpose and intent. The intent of this section is to set forth a program to help incentivize affordable housing development within Monroe County.

(b) Program 1: Transfer of ROGO Exemptions from Mobile Home Parks.

(1) Purpose and intent:

The intent of this program is to establish an appropriate incentive for mobile home park owners to maintain mobile home park sites, mobile home developments in URM and URM-L districts, and contiguous parcels under common ownership containing mobile homes where any of the foregoing is presently serving as a primary source of affordable housing in Monroe County (any of the foregoing being an "eligible sender site") by providing an alternative development strategy to straightforward market-rate redevelopment. This program is intended to allow the transfer of market rate ROGO exemptions associated with lawfully established dwelling units now existing at an eligible sender site to be transferred to another site or sites in exchange for maintaining an equal or greater number of deed-restricted affordable dwelling units within Monroe County. This program seeks to address the housing needs of the Florida Keys as a regional obligation.

This program provides an eligible sender site owner the opportunity to transfer market rate ROGO exemptions currently associated with existing and lawfully established dwelling units from eligible sender sites to receiver site(s) within Monroe County, provided that it involves the pooling of affordable dwelling unit rights for redevelopment at donated, purchased or otherwise appropriately deed-restricted sites, and transfer of ROGO exemptions or allocations for the purpose of implementing and facilitating one or more affordable housing projects. The provisions of this section shall control over all contrary provisions of this Land Development Code related to the transferability of ROGO exemptions.

(2) Procedure.

a. This transfer shall require an approved development agreement.
b. Minor conditional use approval is required to complete the transfer.
c. A development agreement shall not be required for an eligible sender site containing ten or fewer mobile homes. For the purposes of this exception, property owners shall not be permitted to subdivide by deed, split ownership or otherwise divide larger contiguous parcels containing more than ten mobile homes to create parcels containing fewer than ten mobile homes.

(3) Development agreement requirements.

a. Sender site restrictions:

1. ROGO exemptions transferred under this program may be transferred on a 1 for 1 basis where the ROGO exemptions are to be transferred to single-family residential lots or parcels within the same ROGO planning subarea. However, where transfers are to be made to commercial or recreational working waterfronts (as defined by Florida Statutes), or to multi-family projects in non-IS districts, the transfers shall result in no fewer than two deed-restricted affordable or workforce housing units remaining on an eligible sender site(s) for each market rate ROGO exemption transferred. This section expresses the county's preference for transfer of ROGO exemptions to single-family lots/parcels. The following examples are set forth only to show some potential transfer scenarios. A given potential scenario may depend upon availability of affordable ROGO allocations provided by the county.

   Example 1: Transfer on a 1 for 1 basis.

   Existing 100-unit mobile home park. A development agreement with the county may, if approved, allow the owner to transfer up to 100 ROGO-exemptions to single-family lots/parcels as long as an equivalent number of deed-restricted affordable dwelling units remain or are created on one or more created on one or more eligible sender site(s).

   Example 2: Transfer on a 1 for 2 basis.

   The same existing 100-unit mobile home park. A development agreement with the county may, if approved, allow the owner to transfer up to 50 ROGO-exemptions to commercial or recreational working waterfront or multi-family projects in non-IS districts, as long as at least twice as many deed-restricted affordable dwelling units remain or are created on one or more eligible sender site(s).

   Example 3: Transfer on both 1 for 1 and 1 for 2 basis.

   The same existing 100-unit mobile home park. A development agreement with the county may, if approved, allow the owner to transfer up to 25 ROGO exemptions to a commercial or recreational working waterfront Mixed Use parcel, and 50 ROGO-exemptions to single-family lots/parcels, as long as 100 deed-restricted affordable dwelling units remain or are created on one or more eligible sender site(s).

2. The eligible sender site property(ies) shall be donated or sold to Monroe County, or otherwise appropriately deed-restricted for long-term

affordability. Prior to acceptance of a donated or purchased parcel, all units to be maintained on site shall pass a life safety inspection conducted in a manner prescribed by the Monroe County Building Department. Monroe County may then lease the sender site property to a party who will serve as lessee and sub-lessor of the eligible sender site(s).

3. The number of transferred ROGO exemptions shall not exceed the number of restricted affordable dwelling units maintained at the eligible sender sites.

4. The resulting development or redevelopment of affordable housing pursuant to the governing development agreement will be targeted to serve as closely as possible the following household income categories: 25 percent very low income households, 25 percent low income households, 25 percent median income households, and 25 percent moderate income households (or as otherwise approved by the BOCC).

5. Lot rents and/or sales prices for resulting deed-restricted dwelling units shall be established in accordance with restrictions outlined in Florida Statutes and/or the Monroe County Code.

6. All units designated by the applicable development agreement to remain as deed restricted affordable housing at the donated, purchased or appropriately deed-restricted site(s) shall comply with hurricane standards established by the Florida Building Code and habitability standards established under the Florida Landlord and Tenant Act. Compliance shall be accomplished in a manner and within a timeframe set forth in the development agreement or, if applicable, in the relevant minor conditional use.

7. A development agreement proposed under this program shall not utilize more than 50 percent of the existing affordable housing allocations then available to Monroe County, unless otherwise approved by the BOCC.

8. All of the redeveloped or preserved affordable housing units, whether redeveloped or retained at the original sender site(s), or at alternate or additional locations, shall remain in the same planning sub-district as the original sender site(s).

(4) Minor conditional use requirements.

b. Receiver site criteria:

1. The receiver site shall be located in a Tier III designated area.

2. The receiver site shall not be located in a velocity (V) zone.
3. A property owner cannot receive a certificate of occupancy for any unit constructed as a result of a transferred ROGO-exemption until all corresponding eligible sender site units are completed and deed-restricted as affordable dwelling units.
4. All or any portion of the redeveloped or preserved affordable housing units may be redeveloped or retained at one or more alternate or additional locations donated or sold to Monroe County, identified in the Development Agreement and otherwise compliant with the remainder of this section, including but not limited to the requirements set forth in subsection (b)(3)a.2.
5. Transferred ROGO-exemptions shall remain in the same ROGO planning subarea.

(5) Nothing herein shall preclude the county's replacement of sender site dwelling units with affordable allocations and recovery and transfer of market-rate ROGO-exemptions from the sender sites for use in administrative relief programs or other like purposes.

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Chapter 142 SIGNS

Sec. 142-1. Purpose and Intent.

The purposes and intent of this chapter are to:

(1) Facilitate the implementation of goals, objectives and policies set forth in the comprehensive plan relating to sign control, community character and scenic resources and protection of areas from incompatible uses;
(2) Promote and maintain convenience, safety, property values and aesthetics by establishing a set of standards for the erection, placement, use and maintenance of signs that will grant equal protection and fairness to all property owners in the county;
(3) Provide a simple set of regulations that will minimize intricacies and facilitate efficiency of permitting functions and thus assist the regulated public;
(4) Encourage signs that help to visually organize the activities of the county, and lend order and meaning to business identification and make it easier for the public to locate and identify their destinations;
(5) Regulate the size, number and location of signs so that their purpose can be served without unduly interfering with motorists and causing unsafe conditions;
(6) Promote the general welfare, including enhancement of property values and scenic resources, so as to create a more attractive business climate and make the county a more desirable place in which to visit, trade, work and live;
(7) Be fair in that everyone receives equal and adequate exposure to the public and no one is allowed to visually dominate his neighbor;
(8) Authorize the use of signs in commercial and industrial areas that are:

    a. Compatible with their surroundings;
    b. Appropriate to the type of activity to which they pertain;
    c. An expression of the identity of the individual proprietors and the community as a whole; and
    d. Large enough to sufficiently convey a message about the owners or occupants of a particular premises, the commodities, products or devices available on such premises, or the business activities conducted on such premises, yet small enough to prevent excessive, overpowering advertising which would have a detrimental effect on the character and appearance of commercial and industrial areas, or which could unduly distract the motoring public, causing unsafe motoring conditions;

(9) To limit signs in noncommercial areas to protect the character and appearance of noncommercial areas.

Sec. 142-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Area of a sign. Refer to Section 142-5(a).

Banner means any suspended sign made of any flexible material such as, but not limited to, cloth, plastic or paper whether or not imprinted with words or characters.

Billboard means any sign that is required to be registered with the Florida Department of Transportation (FDOT) pursuant to F.S. Chapter 479 and exceeds the size limitations set forth in Section 142-4 of this chapter.

Business frontage. See "frontage, business."

Changeable copy sign means a sign specifically designed for the use of replaceable copy that does not involve replacement of the sign face itself or alteration of the sign structure.

Clear sight triangle means a triangular-shaped area at any driveway connection to a public street and at all street intersections, as required in Section 114-201, in which nothing is allowed to be erected, placed, planted or allowed to grow in such a manner as to limit or obstruct the sight of motorists entering or leaving the driveway or street intersection. Also referred to as clear vision triangle.

Copy means the text or graphic representations of a sign that depict the name of an establishment, products, services or other messages, whether in permanent or removable form.

Erect means, in the context of this chapter, to build, construct, attach, hang, place, suspend, affix or paint a sign.

Facade means the face of a building or structure is most nearly parallel with the right-of-way line under consideration, including related architectural elements such as awnings, parapets and mansard roofs but excluding signs attached to a building that are not otherwise incorporated into such architectural elements.

Face of sign means the planes of a sign on which copy could be placed, including trim and background.

Flag means a piece of light weight, flexible material such as cloth or plastic with one side attached to a pole and the other end flying freely.

Frontage, business means the horizontal linear distance measured along the facade of an individual business. Also referred to as "business frontage."

Frontage, property means the distance measured along a public or private right-of-way or easement including canals, shorelines and runways that affords vehicular access to the property between the points of intersection of the side lot lines with such right-of-way or easement. Where a street or highway is divided as occurs on Key Largo, a parcel of land in the median of the street or highway shall be considered to have a frontage on each side. All parcels that abut U.S. 1 or

County Road 905 shall be considered to have a frontage on such roads regardless of whether a curb cut exists. Also referred to as "property frontage."

Ground-mounted sign means any sign that is mounted on or supported by an upright or brace in or upon the ground, such upright or brace being directly attached in or upon the ground and independent of any other structure. Signs affixed to fences shall be considered ground-mounted signs.

Illuminated sign means any sign that is illuminated by artificial light, either from an interior or exterior source, including outline, reflective or phosphorescent light, whether or not the source of light is directly affixed as part of the sign.

Interior property information sign means signs located entirely on the property to which the sign pertains, are not readily visible from public rights-of-way, and which are intended to provide information to people on the property. Examples include, but are not limited to, "pool closed," "no walking on grass," "pay ramp fee at the office" and "no fishing."

Licensed sign contractor means any person holding a valid certificate of competency in sign erection issued by the county.

Off-premises sign means any sign located on premises other than those on which the business or organization uses products, goods or services that the sign advertises are available. When in the right-of-way of or visible from U.S. 1, off-premises signs are required to be registered with the Florida Department of Transportation (FDOT) pursuant to F.S. Chapter 479.

Pennant means a series of small flag-like pieces of cloth or similar type of material attached and strung between two or more points.

Plane means any surface such as a rectangle, square, triangle, circle or sphere that is capable of carrying items of information; any area enclosed by an imaginary line describing a rectangle, square, triangle or circle which includes freestanding letters, numbers or symbols.

Portable sign means any sign or sign structure that is not permanently attached to the ground or to any other permanent structure or which is specifically designed to be transported. This definition shall include, but not be limited to, trailer signs, A-frame signs, sandwich board signs and vehicles whose primary purpose is advertising.

Posted property sign means a sign such as, but not limited to, the following, which indicates "no trespassing," "beware of dog," "no dumping," or other similar warnings. State statutes may establish requirements for these signs.

Premises means any parcel of land owned, leased or controlled by the person actively engaged in business and so connected with the business as to form a contiguous component or integral part of it; or owned, leased or controlled by a person for living accommodations.

Promotional sign means a temporary sign erected by a nonprofit organization or organizations, holding a valid county public assembly permit, to advertise a special event such as a bazaar, dance, art show, craft show, or similar type of event.

Property frontage. See "frontage, property."

Real estate sign means a sign used solely for the purpose of offering for sale, lease, or rent the property upon which the sign is placed and which includes, but is not limited to, "open house," "open for inspection" and "model home." Such signs are allowed only while a property is for sale, lease or rent.

Sign means any object, device, display or structure, or part thereof, situated outdoors or indoors that is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product service event or location and by any means, including words, letters, figures, designs, symbols, fixtures, colors or projected images. Signs do not include:

(1) The flag or emblem of any nation or organization of nations, state, city, or fraternal, religious or civic organizations;
(2) Merchandise that is not otherwise incorporated into a sign structure;
(3) Models or products incorporated in a window display;
(4) Works of art that do not contain advertising messages and in no way identify a product, use or service; or
(5) Scoreboards located on athletic fields.

Sign structure means any structure that supports, has supported or is capable of supporting a sign, including decorative cover.

Wall-mounted sign means any sign mounted on or painted on and parallel to the facade or wall of a building.

Window sign means any sign mounted to or painted on, or visible through a window for display to the public.

Sec. 142-3. General Provisions.

(a) Applicability of chapter.

(1) Type of activities affected.

This chapter shall apply to any person who erects, constructs, enlarges, moves, changes the copy of, modifies, or converts any signs, or causes the same to be done. If a type of sign is not specifically allowed under this chapter, it shall be considered to be prohibited. The procedure for variances is set forth in Section 142-6. The

procedure for amendments to the text of this chapter is set forth in Chapter 102, Article V.

(2) Type of activities not affected.

The following activities shall not be subject to the regulation under this chapter. However, such activities shall nevertheless comply with the county building code and other applicable regulations of the county, state and federal governments.

a. Any sign erected by or at the direction of the federal, state, or county government. Such signs shall not reduce the authorized size or number of signs otherwise allowed by this chapter. All signs allowed pursuant to this section shall be the minimum necessary to comply with the applicable law;
b. Changing of the advertising copy or message of a lawfully existing changeable copy sign, whether manual or automatic;
c. Changing the copy of a lawfully existing billboard (refer to definition of billboard in Section 142-2);
d. Works of art that do not contain advertising messages, and which in no way identify a product, use, or service;
e. Maintenance of lawfully existing signs and sign structures that does not involve change of copy, modification, enlargement, reconstruction, relocation or additions to any sign or sign structure. Replacement of the damaged or deteriorated plastic face of a sign shall be considered maintenance, provided that the copy is not changed. The necessity to obtain a building permit for such work shall be governed by Chapter 6;
f. The erection of community interest signs in the right-of-way of U.S. 1 as are otherwise allowable pursuant to state or federal law. Examples of community interest signs shall include, but not be limited to, "Welcome to the Florida Keys," "Thank You for Visiting the Florida Keys," and signs that identify recognized communities or municipalities; and
g. Interior property information signs as defined in Section 142-2.

(b) Prohibited signs.

The following types of signs, lights, advertising devices or activities are prohibited:

(1) Off-premises signs; excluding off-premise signs identifying lawfully-established off-premises businesses as permitted in Section 142-4;
(2) Those erected in a clear sight triangle; or at any location where, by reason of the position, shape or color, they may interfere with or obstruct the view of any authorized traffic sign, signal or device;
(3) Abandoned signs that no longer correctly direct or exhort any person; or advertise a bona fide business, lessor, owner, product or activity conducted or available on the premises indicated on such sign;

(4) Animated signs, of which all or part of the sign physically revolves or moves in any fashion whatsoever, or which contains or uses for illustration any light, lights or lighting device which changes color, flashes or alternates, shows motion or movement, or changes the appearance of such sign. The operations of electronic message centers and automatic changing signs shall be governed by Section 142-5(d)(4);

(5) Signs that emit smoke, vapor, particles, odor or sounds;

(6) Motion picture source used in such a manner as to permit or allow the images or audio to be visible or audible from any public street or sidewalk;

(7) No person shall park any vehicle, trailer, floating device, barge, raft, or boat, whether licensed or unlicensed, on any public property, including public rights-of-way, and beaches, or on private property so as to be clearly visible from any public right-of-way, which has attached thereto or located thereon any sign, or promotional element, for the primary purpose of advertising products or services, conveying messages or directing people to a business or activity. This restriction is not intended to prohibit incidental signage on a functional, licensed vehicle which is displayed in a manner to primarily identify the vehicle with the business it serves. Such vehicles shall only park in a lawful parking space. Vehicle signs may not be an attachment that extends or protrudes from the vehicle. However, commercial vehicles that provide delivery services, including taxies, shall be allowed a temporary attached roof sign that identifies the business. Such sign shall only be allowed on the vehicle while doing business and shall be no larger than 24 inches long, 12 inches tall and ten inches wide, including the base;

(8) Portable signs, except for political campaign signs as permitted in Section 142-3(d) and A-frames signs as permitted in Section 142-4(c)(1)h.;

(9) Any sign that is affixed to any wall or structure and extends more than 24 inches perpendicularly from the plane of the building wall;

(10) Any sign attached to a building and projecting above the facade of a building, or any sign mounted on top of a flat roof or on top of any horizontal awning;

(11) Signs that cause radio or television or other communication, electrical, magnetic interference;

(12) Signs erected, constructed or maintained that obstruct any firefighting equipment, window, door or opening used as a means of ingress or egress or for firefighting purposes;

(13) Signs, except posted property signs, that are erected or maintained upon trees or painted or drawn upon rocks or other natural features or tacked, nailed or attached in any way to utility poles;

(14) Signs on public property or road rights-of-way including, but not limited to, signs placed on any curb, sidewalk, post, pole, hydrant, bridge, tree or other surface located on public property or over or across any public or private street except as may otherwise expressly be authorized by this chapter;

(15) Unshielded illuminated devices that produce glare or are a hazard or a nuisance to motorists or occupants of adjacent properties, or signs containing mirrors; and

(16) Pennants.

(c) Dangerous signs.

No person shall allow any sign that is in a dangerous or defective condition to be maintained on any premises owned or controlled by such person. Any such sign shall be removed or repaired by the owner of the sign or the owner of the premises, or as otherwise provided for in this chapter.

(d) Signs not requiring a permit.

The following shall not require a permit but still are subject to Section 142-5:

(1) Banners.

Banners, provided they do not exceed 32 square feet per face and there is only one per business frontage, and they are displayed temporarily for a period of not more than 60 consecutive days, nor more than 60 total days in any one year. Banners exceeding 32 square feet in area shall be required to obtain a permit pursuant to Section 142-4;

(2) Business affiliation and law enforcement signs.

Signs displayed upon the premises denoting professional and trade associations with which the occupant is affiliated, and including, but not limited to, forms of payment accepted by the occupant, and other signs pertaining to public safety and law enforcement, provided the total of such signs does not exceed four square feet;

(3) Business information signs.

Signs providing information to customers such as business hours, telephone number, "open" or "closed," "shirts and shoes required," "no soliciting," and "no loitering," provided that such signs are posted on or near the entrance doors and the total of such signs does not exceed six square feet;

(4) Commemorative plaques.

Signs of recognized historical nature, provided no plaque exceeds 16 square feet per face;

(5) Construction signs.

Signs erected at a building site that identify the name of the project, owner, architect, engineer, general contractor, financial institution, or other persons and firms performing services, labor or supply of materials to the premises; provided the signs are not installed until a building permit is issued and are removed within 30 days of the issuance of the certificate of occupancy and are further limited as follows:

a. Signs for individual tradesmen or professionals shall be limited to four square feet in area per face per tradesman or professional; and
b. Signs for more than one tradesman or professional shall be limited to a total of 32 square feet in area per face and eight feet in height;

(6) Directional signs.

Signs located entirely on the property to which the sign pertains and which are intended to provide direction to pedestrians or vehicular traffic and/or to control parking on private property. Examples: "entrance," "exit," "one-way," "pedestrian walk," "handicapped parking," etc., provided such signs do not exceed six square feet per sign face;

(7) Flags.

Each business frontage shall be allowed to display two flags containing any graphic, symbol, logo or other advertising message, provided that no such flag shall exceed 50 square feet in size. There shall be no number or size limit on the display of the flag of any nation, organization of nations, state, city, or fraternal, religious, or civic organizations;

(8) Garage sale signs.

Signs for garage sales, provided they are erected not more than 24 hours prior to the sale and are removed within 72 hours of the time they were erected and they do not exceed four square feet per face;

(9) Holiday decorations.

Decorations that are clearly incidental to and commonly associated with any national, local or religious holiday; provided that such signs shall be displayed for a period of not more than 60 consecutive days nor more than 60 days in any one year. Such signs may be of any type, number, area, height, illumination or animation, provided that they do not interfere with public safety;

(10) Memorial signs or tablets.

Signs including, but not limited to, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze or other noncombustible materials, provided the total of such signs does not exceed eight square feet;

(11) Nameplates.

Signs bearing only property numbers, street addresses, mailbox numbers, estate names, the occupation of the occupant or names of occupants of the premises, provided the signs do not exceed two square feet per sign face;

(12) Posted property signs.

Signs such as, but not limited to, the following, which indicate "no trespassing," "beware of dog," "no dumping," or similar warnings, provided they individually do not exceed 1.5 square feet in area per sign and not exceeding four in number per lot, or of such number, spacing, and size as is required per state statutes. Such signs shall not be illuminated nor shall they project over any public right-of-way;

(13) Warning signs.

Signs informing the public of the existence of danger, but containing no advertising material, provided the sign does not exceed the minimum necessary to inform the public and are removed upon subsidence of danger;

(14) Window signs.

Window signs that collectively cover 35 percent or less of the window glass surface area. Note: The abovementioned business information and business affiliation signs shall be excluded from the computation of the window sign area;

(15) New business signs.

Once an application for a permanent sign is submitted to the county, a new business, or a business in a new location may erect a temporary sign without a permit for a period not exceeding 120 days from the date of application for a permanent sign, provided that:

a. There is only one ground-mounted or wall-mounted sign;
b. The total sign area does not exceed 32 square feet;
c. The sign, if ground-mounted, does not exceed eight feet in height; and
d. The temporary sign shall be removed upon the installation of the permanent sign;

(16) Political signs.

Political signs are signs on behalf of candidates for public office or measures on election ballots and shall be allowed as follows:

a. Political signs may be erected no earlier than 70 days prior to such election and shall be removed within 14 days following such election. Signs may remain in place between primary and general elections for those candidates advancing past the primary. Failure to meet these conditions shall constitute the basis for sign removal by the county or its designee;
b. In areas zoned primarily for residential or low intensity nonresidential uses (CD, CFV, IS, MN, NA, OS, PR, SS, SR, SR-L, UR, URM, AND URM-L), political signs shall not exceed 16 square feet per face or eight feet in height and shall not be illuminated; and
c. In areas zoned primarily for nonresidential uses (AD, CFA, CFSD, DR, I, MF, MI, MU, RV, SC, and UC) political signs shall not exceed 32 square feet per face in area or eight feet in height;

(17) Promotional signs.

Promotional signs per Section 142-4(a)(1)a.;

(18) Real estate signs.

Real estate signs per Section 142-4(a)(2)a.; and

(19) Monument signs.

Signs recognizing persons or points of historic interest may be placed on any parcel, if applicable to the parcel, but shall not exceed four square feet.

Sec. 142-4. Signs Requiring a Permit and Specific Standards.

Upon application for, and issuance of a building permit, except as indicated, the following signs shall be allowed. In order for a sign application to be approved, the applicant must grant access to the property for inspection purposes, for the life of the sign.

(a) Special signs.

(1) Promotional signs.

a. Promotional signs not exceeding 32 square feet. Promotional signs not exceeding 32 square feet per face shall not require a permit, provided that such signs are:

1. Not illuminated;
2. Not located in a clear sight triangle;
3. Limited to two promotional signs on the premises of the event;
4. Posted no earlier than 15 days before the event and are removed within five days after the event; and

5. Limited to two off-premises promotional signs erected no more than 24 hours prior to the event and removed no later than 24 hours after the conclusion of the event, provided that permission of the property owner of which the off premise promotional sign is erected is granted.

b. Promotional signs exceeding 32 square feet. Promotional signs exceeding 32 square feet in area per face shall be allowed in any Land Use (Zoning) District by issuance of a single building permit, provided that the promotional signs:

1. Are erected no earlier than 30 days prior to a proposed event and are removed within five days after such event;
2. Do not exceed 128 square feet; and
3. Are located on the premises of the event.

(2) Real estate signs.

a. Real estate signs not exceeding six square feet. One real estate sign not exceeding six square feet per face including riders, per property shall not require a permit, provided the sign is:

1. Not illuminated; and
2. Ground-mounted signs shall not exceed eight feet in height.

b. Real estate signs exceeding six square feet. Real estate signs exceeding six square feet per face shall require a permit and shall be subject to the following restrictions:

1. Multiple-family structures, nonresidential buildings and vacant land shall be allowed one non-illuminated wall-mounted or ground-mounted sign, not exceeding 32 square feet in area, per each street frontage. Such ground-mounted signs shall not exceed eight feet in height.
2. Any property of ten acres or more in size, regardless of the limitations set forth in subsection (a)(2)b.1. of this section, shall be allowed non-illuminated ground-mounted or wall-mounted signs as follows: One sign not exceeding 32 square feet may be erected for every 400 linear feet of frontage on any one street. Such ground-mounted signs shall not exceed eight feet in height.

(3) Hospitals or other emergency facilities. In addition to any other signage allowed under this chapter, hospitals or other emergency medical facilities, excluding individual medical offices, shall be allowed one additional illuminated ground-mounted or wall-mounted sign not exceeding 32 square feet per face to identify each emergency entrance.

(4) Bench signs. Bench signs shall be allowed, upon approval of the BOCC, at any designated bus stops subject to the following limitations:

a. Benches in residential areas shall not have signs, except a bench donor sign containing the donor's logo or symbol, not exceeding two inches by 16 inches in size;
b. Benches in commercial areas shall be allowed to have signs on the back rest not to exceed a total of six square feet; and
c. Bench signs shall be limited to one per designated bus stop.

(b) Signs in residential areas and areas of low intensity.

Signs in residential areas and areas of low intensity (CD, CFV, IS, MN, NA, OS, PR, SS, SR, SR-L, UR, URM, URM-L) shall be restricted as follows:

(1) Commercial and other nonresidential uses. Commercial and other nonresidential uses within the land use (zoning) districts, CD, CFV, IS, MN, NA, OS, PR, SS, SR, SR-L, UR, URM, URM-L, which are adjacent to U.S. 1 shall be regulated pursuant to subsection (c) of this section. Unless otherwise provided for in this chapter, all other commercial and nonresidential uses in these land use (zoning) districts shall be allowed one ground-mounted sign and wall-mounted signage which shall be limited as follows:

a. The ground-mounted sign shall be limited to 32 square feet in area per face and eight feet in height; and
b. Wall-mounted signage shall be limited to a total of 32 square feet.

(2) Residential subdivision or condominium sign.

a. One permanent, wall-mounted or ground-mounted sign, for identification purposes only, giving only the name of the subdivision, or residential development, may be granted a permit at each main entrance into such subdivision or development from each abutting street.
b. The following limitations shall apply:

1. The subdivision or development shall have a homeowner's association or similar entity that will be responsible for permits and maintenance of the signs;
2. The face of each sign shall not exceed 32 square feet;
3. The maximum permitted height shall be eight feet; and
4. The sign may incorporate, or be incorporated into, accessory entrance structural features such as a project wall or landscaping.

(3) Institutional uses and private parks. Institutional uses, private parks and similar uses shall be allowed one ground-mounted sign and wall-mounted signage that shall be limited as follows:

a. The ground-mounted sign shall be limited to 32 square feet in area per face (a maximum of 64 square feet for all faces) and eight feet in height;
b. Wall-mounted signage shall be limited to a total of 32 square feet; and
c. An additional 16 square feet in area per face may be added to the ground-mounted sign for the exclusive use of a changeable copy sign.

(4) Electronic message centers and automatic changing signs. Electronic message centers and automatic changing signs shall be prohibited in residential areas and areas of low intensity (CD, CFV, IS, MN, NA, OS, PR, SS, SR, SR-L, UR, URM, URM-L).

(c) Signs in commercial/nonresidential areas.

Sign allowances in commercial and other nonresidential areas (AD, C1, C2, CFA, CFSD, DR, I, MF, MI, MU, RV, SC, UC) shall be calculated based on the amount of property frontage and business frontage as follows:

(1) Ground-mounted single-tenant/occupant signs. Every developed parcel of land with a commercial or other nonresidential use shall be allowed the following ground-mounted signage:

a. One illuminated or non-illuminated, ground-mounted sign of a height not more than 24 feet shall be allowed for each frontage as indicated in the following table:

Permitted Size of Nonresidential Signs per Property Frontage		
Street Frontage (Linear feet)	*Maximum Area* Per Face *(square feet)*	*Total Face Area (square feet)*
Frontage on U.S. 1 or a frontage road adjacent to U.S. 1:		
1 ft. to 150 ft.	75 sq. ft.	150 sq. ft.
151 ft. to 300 ft	100 sq. ft.	200 sq. ft.
Over 301 ft. or more	200 sq. ft.	400 sq. ft.

Frontage on county roads, shorelines or runways:		
1 ft. to 150 ft.	40 sq. ft.	80 sq. ft.
151 ft. to 300 ft.	60 sq. ft.	120 sq. ft.
Over 301 ft. or more	80 sq. ft.	160 sq. ft.

b. Parcels that are on a corner of two public streets shall be allowed either:

1. One ground-mounted sign for each property frontage; or
2. One ground-mounted sign with exposure to both streets with up 1.5 times the maximum amount of area allowed on any one property frontage.

c. Where a street or highway is divided as occurs on Key Largo, which results in a parcel of land in the median of the street or highway then the property shall be considered to have a frontage on each side.

d. Service stations, convenience stores, marinas, or other facilities dispensing fuel to the public shall be allowed to add to each authorized ground-mounted sign, an additional 40 square feet or 20 square feet per face of signage for the exclusive use of a changeable copy sign for posting fuel prices.

e. A school, church, day-care center or other similar use shall be allowed to add an additional 64 square feet or 32 square feet per face of signage to the ground-mounted or wall-mounted sign for the exclusive use of a changeable copy sign.

f. Individual charter boats shall be allowed a ground-mounted sign at the charter boat's dock slip, provided the sign does not exceed a total of 32 square feet and there is no more than one fish replica. Signs allowed under this provision shall be exempt from shoreline setback requirements.

g. Drive-through or carry-out services shall be allowed a ground-mounted sign that carries only the name of the establishment and the current list and price of goods or services available in the establishment and is not intended to be viewed from any right-of-way and provided that the sign is limited to a maximum of 40 square feet.

h. Any parcel that does not have a ground-mounted sign as defined in Section 142-2 shall be allowed a single A-frame sign in place of the ground-mounted sign. Such A-frame signs shall meet all of the following standards:

1. A building permit shall be required prior to the sign's erection and the building permit number shall be permanently affixed to the sign in a plainly visible manner;
2. The sign shall be no greater than three (3) feet in width and no greater than four (4) feet in height, exclusive of legs that can be no more than six (6) inches in height;
3. The sign shall be of A-frame-type construction, with only two sign faces that are joined at the top;
4. The sign is portable and not permanently affixed to the ground;
5. The sign is located on a private parcel of land and identifies a business on that same private parcel of land. The sign may not be located on a public right-of-way or walkway;
6. The sign shall only identify a lawfully-established business name(s) and/or other information directly related to that business;
7. The sign shall not be located in a clear sight triangle;
8. The sign shall not be illuminated or electric and shall not have any electric devices attached thereto; and
9. The sign shall be stored indoors during tropical storm/hurricane watches and warnings and other severe weather advisories;

i. Ground-mounted multi-tenant/occupant signs. Every developed parcel of land with greater than one commercial or other nonresidential use shall be allowed additional ground-mounted signage area if granted Administrative Variance as outlined in Section 142-6.

(2) Wall-mounted signs.

a. Signs painted or attached to the surface of awnings, parapets, mansards and similar roof and building elements shall be considered wall-mounted signs for purposes of determining compliance with the requirements of this chapter.
b. Wall-mounted signs shall not extend above the facade of a building or project outward more than 24 inches from the facade or wall to which it is attached.
c. Each individual business frontage shall be allowed wall-mounted signage equal in area to two square feet times the length of the individual business frontage.
d. A commercial or other nonresidential building located on a corner of two public streets shall be allowed wall-mounted signage on the wall not considered to be the front (i.e., a side street) equal in area to one square foot times the length of such wall.
e. The side of a commercial or other nonresidential building not on a corner of two public streets shall be allowed wall-mounted signage on the side walls equal in area to one-half square foot times the length of the side of the building.
f. If the rear of a commercial or other nonresidential building faces a public street or public parking lot, a wall-mounted sign up to a maximum of eight square feet shall be allowed per individual business.

g. On a multistory commercial or other nonresidential building, wall-mounted signage shall be permitted for each additional floor as outlined in subsection (c)2.c. of this section.
h. Theaters, museums, auditoriums and fairgrounds and similar uses providing regular shows shall be permitted an additional 50 square feet of a changeable copy wall-mounted sign. Along the wall adjacent to the ticket windows, a theater may display, without requiring a sign permit, one poster up to 12 square feet for each movie being shown.
i. Drive-through or carry-out services shall be allowed one wall-mounted sign that carries only the name of the establishment and the current list and price of goods or services available in the establishment and is not intended to be viewed from any right-of-way and provided that the sign is limited to a maximum of 40 square feet.

(3) Canopy signs. One sign per business entrance shall be allowed to be erected underneath, and extending downward from, a canopy along the front of a building, provided:

a. The sign does not exceed eight square feet per face;
b. The sign is permanently attached and does not swing;
c. The sign is perpendicular to the facade of the building; and
d. The sign is located above a walkway.

(d) Off-premises signs.

Any nonresidential, lawfully-established business located on U.S. 1 shall be allowed to dedicate any portion of its allowance for one (1) ground-mounted sign to another nonresidential, lawfully-established business not located on U.S. 1. The side street intersecting U.S. 1 used to access the other nonresidential business shall be located within one-half mile of the property on U.S. 1 providing the off premises signage. Such off-premises signage shall be limited to one sign face per direction on U.S. 1. Off-premises advertising is also subject to subsections (c)(1) and (c)(2) of this section and to regulations pursuant to F.S. Chapter 479.

A permit must be obtained from the Florida Department of Transportation (FDOT) Outdoor Advertising office for any off-premises sign that is within 600 feet of the nearest edge of the U.S. 1 right-of-way and/or is visible from U.S. 1. New permits will not be issued for off-premises signs visible from a designated scenic highway (Rule 14-10(4)(c) Florida Administrative Code). The Building Department shall not issue any building permit for an off-premise sign until the applicant provides documentation from the FDOT indicating that a proposed off-premise sign is permitted by the FDOT or that a permit is not necessary from the FDOT. It is the responsibility of the applicant to obtain all federal, state and local permits for any off-premises sign.

Sec. 142-5. Regulations Pertaining to the Measurement, Construction, and Maintenance of All Signs.

The requirements of this section shall apply to all signs whether or not a permit is required unless otherwise noted below:

(a) Measurement of sign area.

(1) The sign area shall be measured from the outside edges of the sign or sign frame, whichever is greater, excluding the area of the supporting structures, provided that the supporting structures are not used for advertising purposes and are of an area equal to or less than the permitted sign area. In the case of wall-mounted signs without border or frame, the surface area shall include such reasonable and proportionate space as would be required if a border or frame were used.

(2) When a single sign structure is used to support two or more signs, or unconnected elements of a single sign, the surface area shall comprise the square footage within the perimeter of a regular geometric form enclosing the outer edges of all the separate signs or sign elements. However, undecorated space of up to 12 inches between separate sign panels may be excluded from the sign area measurement where necessary to provide structural support members or to provide visual separation between sign panels.

(3) Where signs are installed back-to-back, both faces shall be counted as sign area.

(b) Measurement of sign height.

The height of a sign shall be considered to be the vertical distance measured from the top of the structure to the finished ground elevation of the site at the base of the sign. In no event shall excess fill be used to raise a sign.

(c) Location of signs.

(1) Clear sight triangle. No sign shall be erected that would impair visibility at a street intersection or driveway entrance pursuant to Section 114-201.
(2) Clearance from high-voltage power lines. Signs shall be located in such a way that they maintain a horizontal clearance of thirteen (13) feet from all overhead electrical conductors over 7,000 volts and a three-foot horizontal clearance from all secondary low voltage service drops. Any exceptions to this must be reviewed and written approval granted by the local utility provider. The applicant shall coordinate with the local utility provider in determining the type of electrical conductors and service drops located near proposed signs.
(3) Setbacks from property lines. The minimum setback for signs shall be five feet. Setbacks shall be measured from the property line to the farthest extension of the sign, including any overhangs, guy wires and supports.

(4) Scenic corridor bufferyard. Where a scenic corridor bufferyard is required pursuant to Section 114-125, ground-mounted signs shall only be erected in the immediate vicinity of a driveway.

(5) Fences. Signs not requiring a permit under Section 142-3(d) may be placed on a fence regardless of setbacks provided the sign does not extend above the fence or project more than four inches outward from the fence.

(d) Construction and operation of signs.

All signs shall comply with the following requirements unless no permit is required.

(1) Compliance with Florida Building Code. All signs shall comply with the appropriate detailed provisions of the Florida Building Code, relating to design, structural members and connections. Signs shall also comply with the additional standards hereinafter set forth.

(2) Licensed contractor. Signs shall only be erected by entities authorized by Chapter 6.

(3) Structure design. All signs that contain more than 40 square feet in area or are erected over 20 feet in height shall be designed by an engineer registered in the state. Structural drawings shall be prepared by the engineer and submitted prior to a permit being issued. Wind load calculations shall be contained in the engineering drawings. The building official may set wind load requirements greater than the Florida Building Code if deemed necessary to protect the health, safety and welfare of the public or property owners surrounding the sign. The Building Official may request wind load calculations for signs of less than 40 square feet in area prior to issuing a permit.

(4) Electric signs and illuminated signs.

a. All electric signs shall require a permit and shall be Underwriter's Laboratory approved or certified by a sign electrician specialty contractor or master sign contractor, or an electrical contractor, that the sign meets the standards established by the National Electrical Code, current edition. All electric signs shall be erected and installed by an entity authorized to do so by Chapter 6 of the Monroe County Code, and shall be in conformance with the National Electrical Code, current edition. The provision of electrical power to a power source or connection of a sign to existing electrical service shall be by an entity authorized by Chapter 6.

b. Artificial light used to illuminate any sign from outside the boundaries of such sign shall be screened in a manner that prevents the light source from being visible from any right-of-way or adjacent property.

c. Electronic message centers or automatic changing signs (ACS) shall comply with the following:

1. Lamps/bulbs in excess of nine (9) watts for incandescent bulbs (or its equivalent if CFL, LED, or other type of bulb) are prohibited in the ACS matrix;

2. ACS lamps/bulbs shall be covered by lenses, filters, or sunscreens;
3. ACS signs shall be equipped with an operational night dimming device; and
4. Other than the scrolling of written messages or non-animated graphics, all operating modes that result in animation as defined in Section 142-3(b) are prohibited.

(5) Supports and braces. Supports and braces shall be adequate for wind loading. Wire or cable supports shall have a safety factor of four times the required strength. All metal, wire cable supports and braces and all bolts used to attach signs to a bracket or brackets and signs to the supporting building or structure shall be of galvanized steel or of an equivalent corrosive-resistant material. All such sign supports shall be an integral part of the sign.

(6) Sign anchoring. No sign shall be suspended by chains or other devices that will allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on supporting members or connections.

(7) Double-faced signs. Double-faced signs with opposing faces having an interior angle greater than 45 degrees shall not be permitted.

(e) Sign identification and marking.

Unless specifically exempted from permit requirements of this chapter, no sign shall hereafter be erected, displayed, rebuilt, repaired, the copy changed, painted or otherwise maintained until and unless the building permit number is painted or otherwise affixed to the sign or sign structure in such a manner as to be plainly visible from grade.

(f) Maintenance.

All signs for which a permit is required by this chapter, including their braces, supports, guys and anchors, shall be maintained so as to present a neat, clean appearance. Painted areas and sign surfaces shall be kept in good condition, and illumination, if provided, shall be maintained in safe and good working order.

(g) Responsibility.

The sign owner, the owner of the property on which the sign is placed and the sign contractor shall each be held responsible for adherence to this chapter and Chapter 6.

Sec. 142-6. Criteria for Variances.

(a) Purpose.

The purpose of this section is to establish authority, procedures, and standards for the granting of variances from certain requirements of this chapter.

(b) Administrative variances.

The Planning Director is authorized to grant administrative variances to the maximum area per face requirements set forth in Section 142-4(c)(1)i. for ground-mounted signs that accommodate more than a single user (i.e. tenant, business, organization).

(1) Application.

An application shall be submitted to the Planning Director on a form approved by the Planning and Environmental Resources Department.

(2) Standards.

The Planning Director shall grant an administrative variance to the maximum area per face requirements for ground-mounted signs that accommodate more than a single user only if the applicant demonstrates that all of the following standards are met:

a. The granting of the administrative variance shall not be materially detrimental to other property owners in the immediate vicinity;
b. The administrative variance shall be the minimum necessary to provide relief to the applicant;
c. Each user shall be permitted only a single identification sign per each face/side of the ground-mounted sign;
d. The area of each user's identification sign shall not exceed 100 square feet per each face/side of the ground-mounted sign;
e. The total maximum area per face for the ground-mounted sign shall not exceed 400 square feet in area unless a variance is granted by the Planning Commission in accordance with Section 142-6(c);
f. The total face area for the ground-mounted sign shall not exceed 800 square feet on double-sided signs unless a variance is granted by the Planning Commission in accordance with Section 142-6(c);
g. Such a ground-mounted sign shall not be constructed within 40 linear feet of another ground-mounted sign; and
h. The sign shall be designed in accordance with the size of lettering guidelines set forth in Section 142-9.

(3) Procedures.

The Planning Director shall determine if an application complies with the standards of Section 142-6(b)(2) within 60 days of the Planning and Environmental Resources Department's receipt of a complete application. If the Planning Director determines that the application complies with the standards, the Planning and Environmental Resources Department shall carry out public notification in accordance with 142-6(b)(4). If the Planning Director determined that the application does not comply with

the standards, the Planning Director shall issue a written decision of denial to the applicant.

(4) Surrounding property owner notification of application.

Only after determining that an application for a variance complies with the standards, the Planning Director shall provide written notice by regular mail to owners of real property located within 300 feet of the property that is the subject of the application. The notice shall provide a brief description of the proposed administrative variance and indicate where the application may be examined. The cost of providing notice shall be borne by the applicant.

(5) Decision by the Planning Director.

After 30 days of the date in which the written notification was sent per Section 142-6(b)(4), the Planning Director shall review of all public responses to the application. Upon a finding that the application has or has not complied with the requirements and standards of this section, the Planning Director shall issue a written administrative variance decision.

(6) Public hearing by the Planning Commission.

If requested in writing by the applicant, or an adversely affected owner or resident of real property located in the county during the required 30-day notification period, a public hearing shall be scheduled on the application. All costs of the public hearing shall be the responsibility of the applicant for the administrative variance. The public hearing shall be conducted and noticed in accordance with Section 110-5.

(c) Variances granted by the Planning Commission.

The Planning Commission is authorized to grant variances to this chapter.

(1) Application.

An application shall be submitted to the Planning Director on a form approved by the Planning and Environmental Resources Department.

(2) Standards.

The Planning Commission shall grant a variance only if the applicant demonstrates that all of the following standards are met:

a. The literal interpretation and strict application of the provision and requirements of this chapter would cause undue and unnecessary hardship to the sign owner

because of unique or unusual conditions pertaining to the specific building or parcel or property in question;

b. The granting of the requested variance would not be materially detrimental to the property owners in the immediate vicinity;

c. The unusual conditions applying to the specific property do not apply generally to other properties in the unincorporated county;

d. The granting of the variance will not be contrary to the general objective of this chapter of moderating the size, number and obtrusive placement of signs and the reduction of clutter;

e. The variance is not requested solely on the basis of economic hardship of the sign user;

f. The variance shall be the minimum necessary to provide relief to the applicant; and

g. The variance shall not permit a sign expressly prohibited in Section 142-3(b).

(3) Procedures.

The Planning Director shall determine if an application is complete. Within 60 days of the Planning and Environmental Resources Department's receipt of a complete application, the Planning Department shall schedule the application for review and decision by the Planning Commission. The Planning Director shall review the entire application and all public responses thereto and prepare a staff report with recommendations for the Planning Commission. The application shall be heard at a regularly scheduled meeting of the Planning Commission. Notice, posting and hearing requirements shall be in accordance with Section 110-5.

(4) Decision by the Planning Commission.

Within 30 days of the date of the public hearing, upon a finding that the application has or has not complied with the requirements and standards of this section, the Planning Commission shall issue a written variance decision.

Sec. 142-7. Nonconforming Signs.

Lawfully established signs which become non-compliant and or nonconforming to the current regulations as a result of any amendment to this chapter may continue only as follows:

(a) For nonconforming ground-mounted signs, changes of copy, including type style and color changes, may be performed, provided that a permit is obtained and provided that the name of the businesses or establishments depicted by the sign are not changed. Changes of copy involving the name of the businesses or establishments depicted by the sign shall only be performed if the sign is brought into compliance with the requirements of this chapter.

(b) No permit shall be issued for repair or reconstruction of any nonconforming sign structure where such work would be more than 50 percent of the replacement cost of the sign, unless

the sign is brought into compliance with the requirements of this chapter. Neither shall the cumulative costs of repair or reconstruction exceed 50 percent of the replacement cost of any nonconforming sign. The Planning and Environmental Resources Department shall maintain an independently verified schedule of the replacement cost of signs.

(c) Determinations of nonconforming signs shall be made such that ground-mounted signs are treated separately from wall-mounted and all other signage. For example, where both the ground-mounted and wall-mounted signs of a particular parcel are nonconforming, the change of copy of a wall-mounted sign shall not require that the ground-mounted signage be brought into compliance. However, where a sign other than a ground-mounted sign is required to be brought into compliance, all of the signs of an establishment other than the ground-mounted signs shall be brought into full compliance with this chapter.

(d) Signs that cannot comply with the requirements of this chapter may be allowed to continue if designated as a historical or cultural landmark pursuant to Chapter 135, Article I. The specific conditions under which a designated sign is allowed to continue shall be set forth in the resolution of the BOCC.

Sec. 142-8. Special Identification Signs.

(a) Community business directory signs.

The county may work with FDOT District 6 and local communities to develop a sign program that promotes businesses within specific communities in the Florida Keys through the use of centrally located multiple user business identification signs on U.S. 1.

(b) Community identification signs.

The county may work with FDOT District 6 to develop a sign program that identifies specific communities in the Florida Keys. The county shall coordinate with local communities to incorporate a theme which promotes the unique character of the local community.

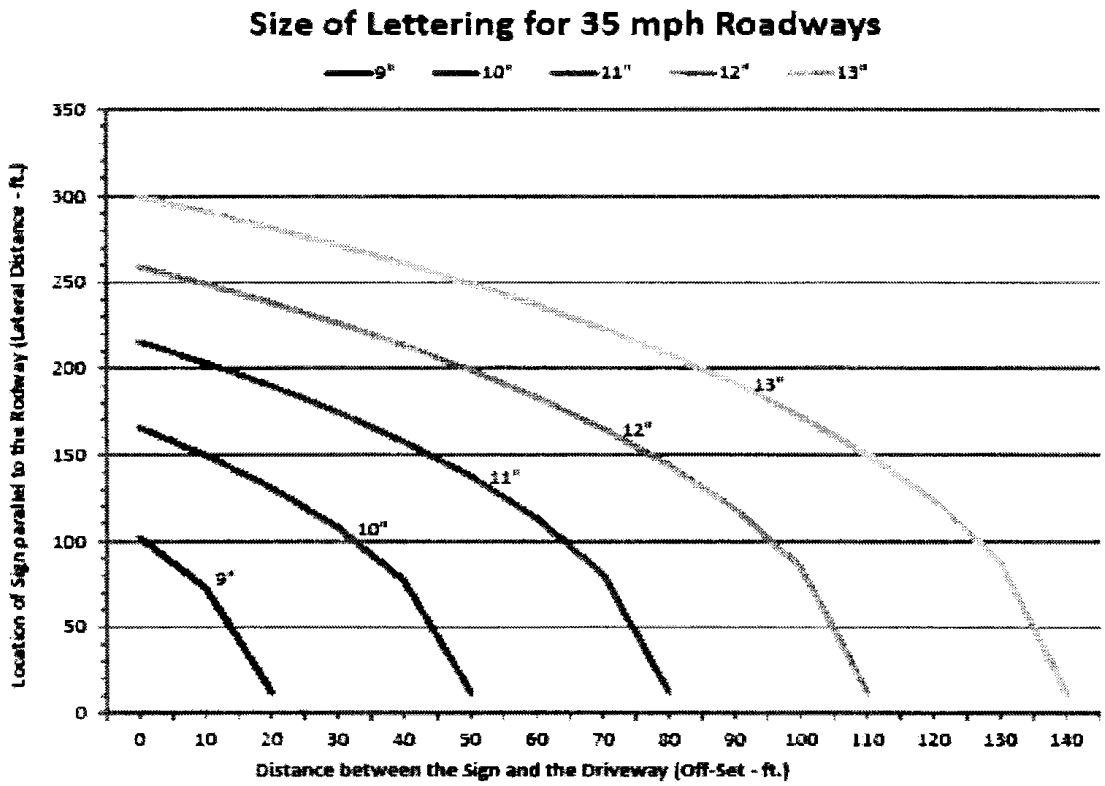
(c) Off-premises special feature identification signs.

The county may work with FDOT District 6 to develop a sign program that identifies special features, tourist sites and business districts. The county shall coordinate with local communities to select appropriate landmarks to be identified.

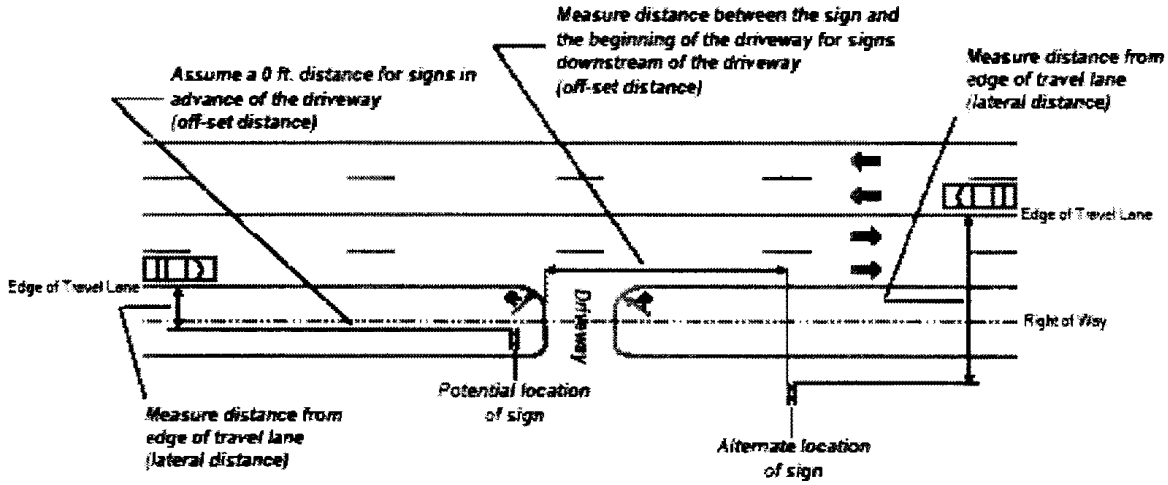
Sec. 142-9. Guidelines for the size of lettering on signs.

The following illustrations serve as guidelines for the minimum size of lettering to be utilized by the applicants in order to achieve safe visibility from passing motorists:

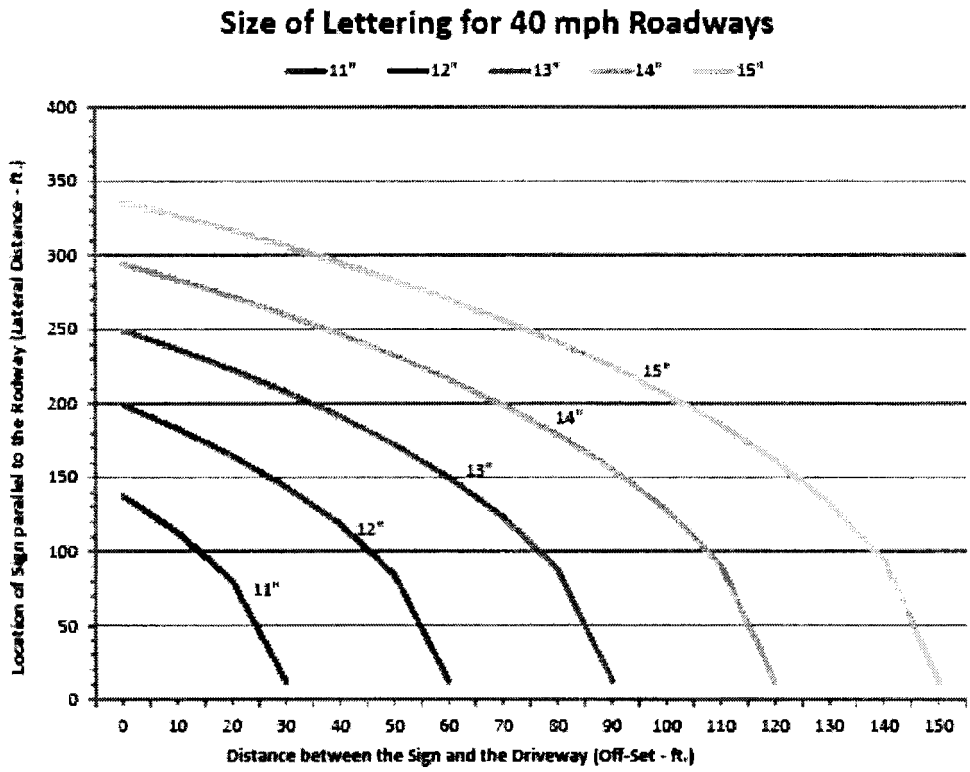
(a) Along 35 mile per hour (mph) roadways:



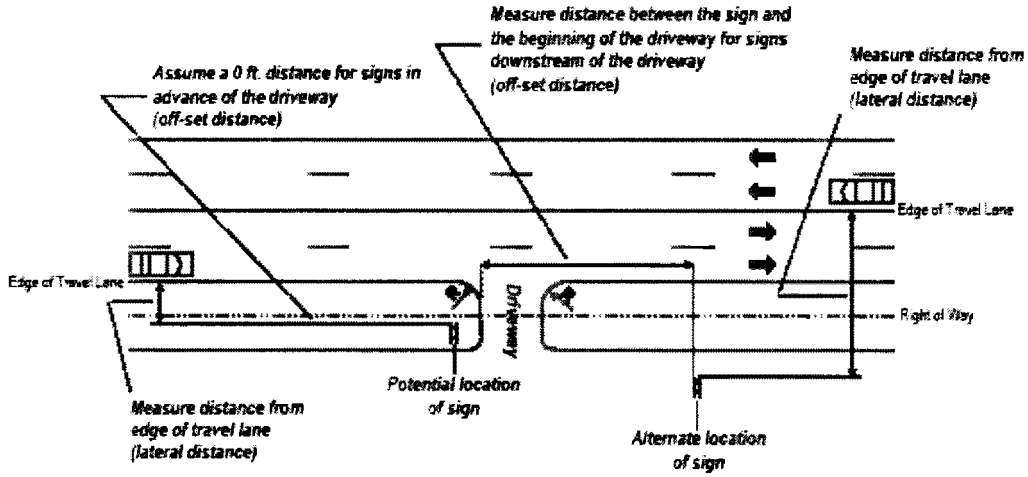
Determine the location of sign parallel to the roadway (Lateral Distance) and the distance between the sign and the driveway (Off-Set). Plot the point corresponding to the lateral and off-set distances. Select the letter size corresponding to the line including or immediately above the plotted point. When a sign is intended to serve both approaches, plot a point for each approach and select the larger letter size.



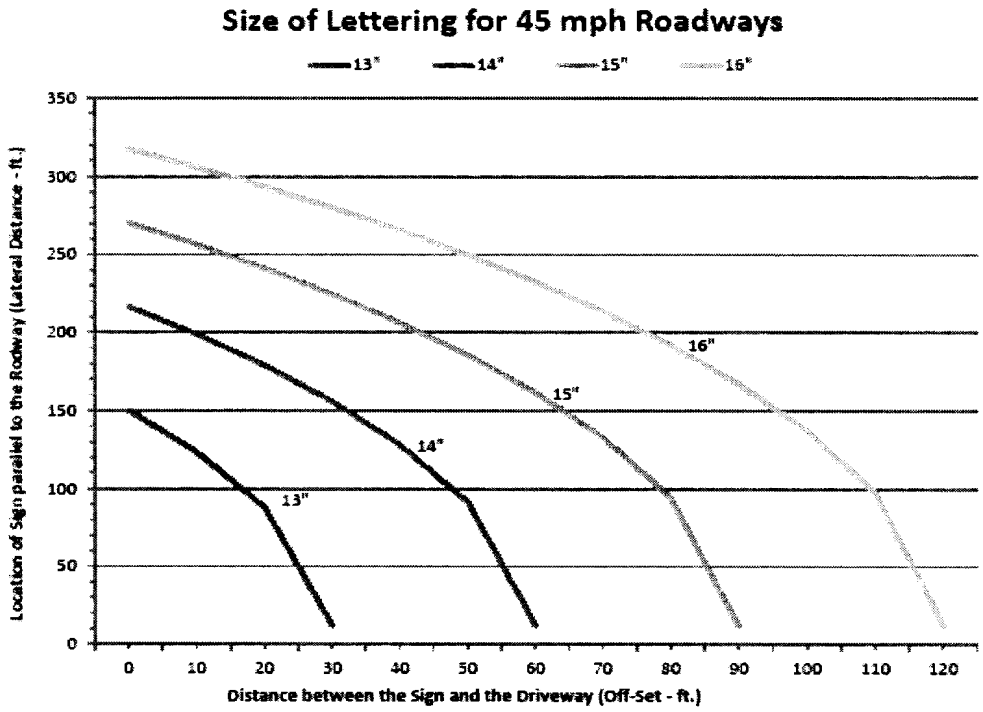
(b) Along 40 mile per hour (mph) roadways:



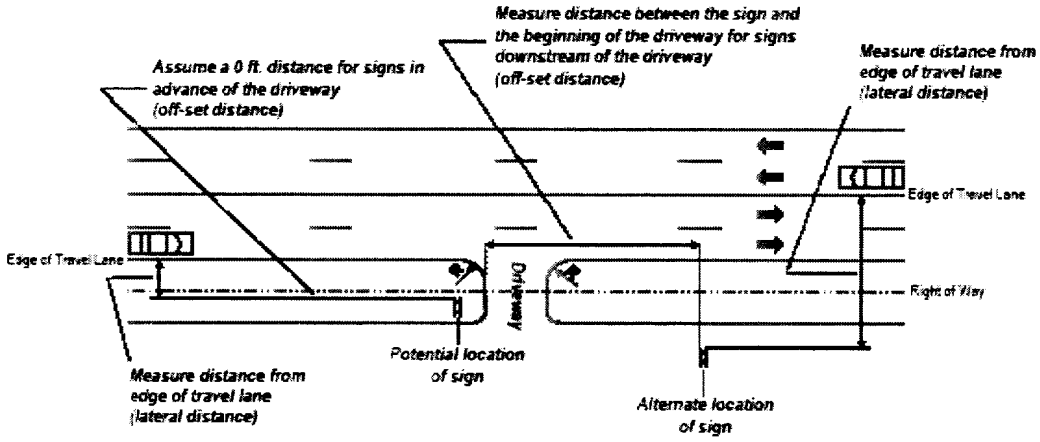
Determine the location of sign parallel to the roadway (Lateral Distance) and the distance between the sign and the driveway (Off-Set). Plot the point corresponding to the lateral and off-set distances. Select the letter size corresponding to the line including or immediately above the plotted point. When a sign is intended to serve both approaches, plot a point for each approach and select the larger letter size.



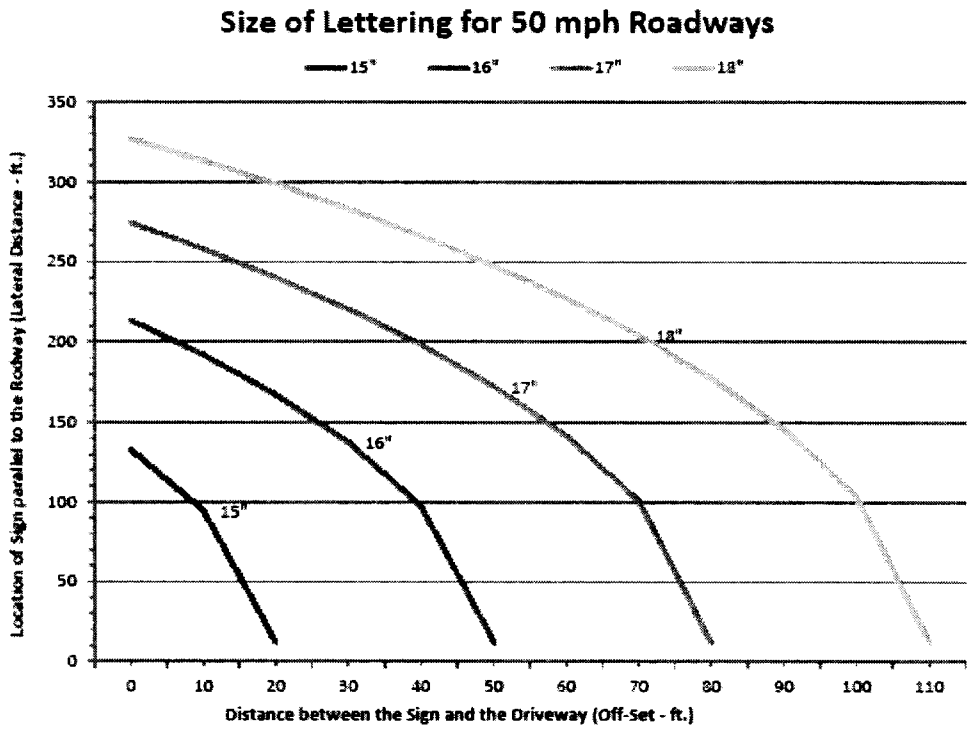
(c) Along 45 mile per hour (mph) roadways:



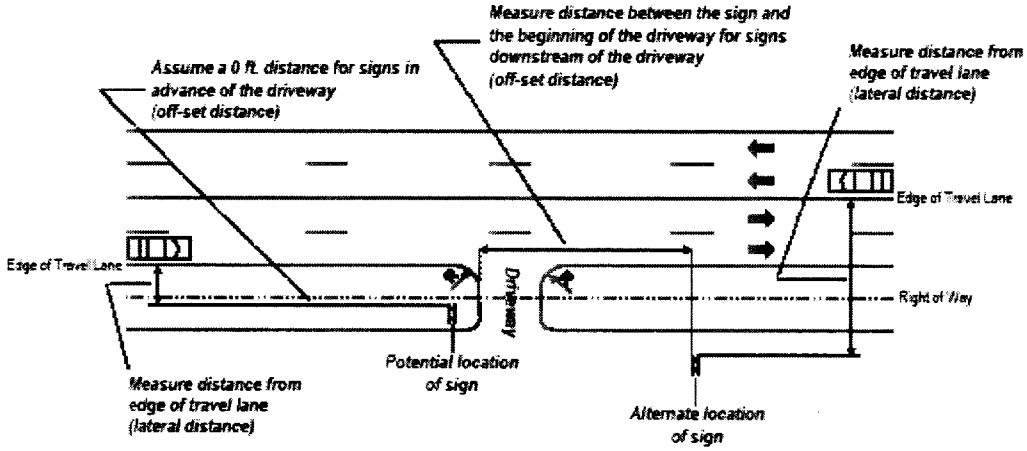
Determine the location of sign parallel to the roadway (Lateral Distance) and the distance between the sign and the driveway (Off-Set). Plot the point corresponding to the lateral and off-set distances. Select the letter size corresponding to the line including or immediately above the plotted point. When a sign is intended to serve both approaches, plot a point for each approach and select the larger letter size.



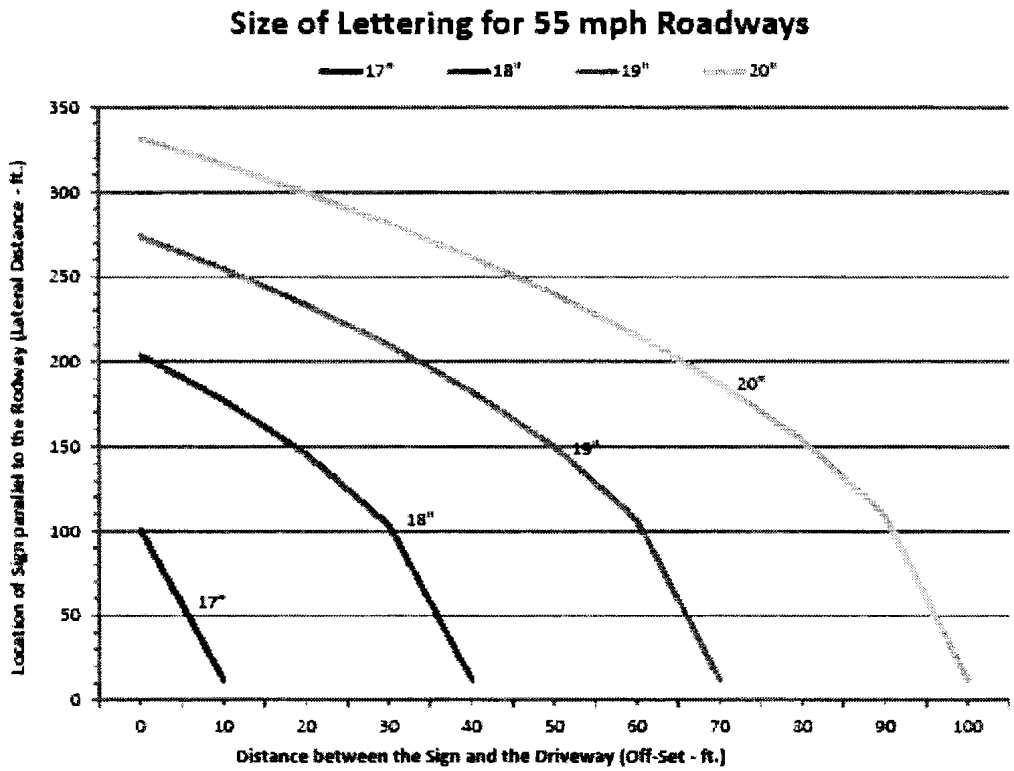
(d) Along 50 mile per hour (mph) roadways:



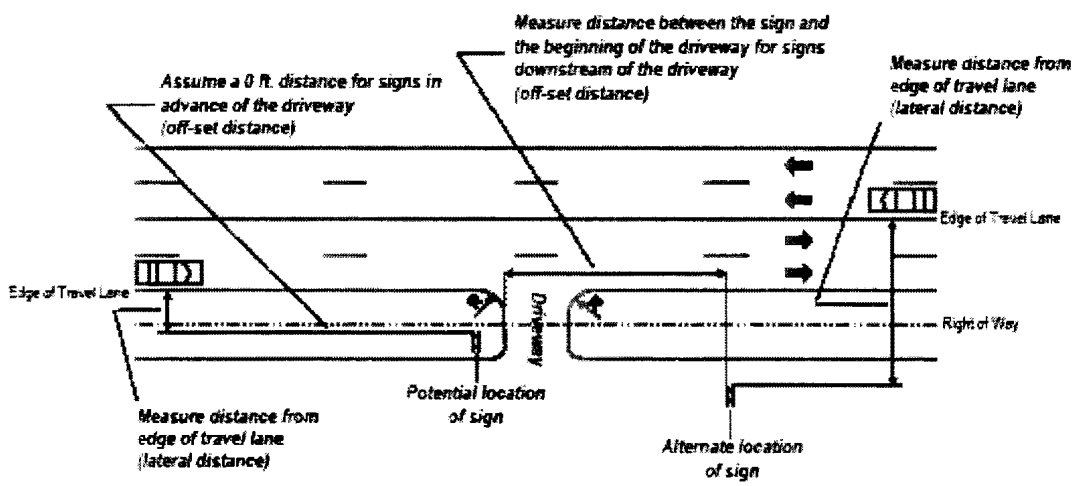
Determine the location of sign parallel to the roadway (Lateral Distance) and the distance between the sign and the driveway (Off-Set). Plot the point corresponding to the lateral and off-set distances. Select the letter size corresponding to the line including or immediately above the plotted point. When a sign is intended to serve both approaches, plot a point for each approach and select the larger letter size.



(e) Along 55 mile per hour (mph) roadways:



Determine the location of sign parallel to the roadway (Lateral Distance) and the distance between the sign and the driveway (Off-Set). Plot the point corresponding to the lateral and off-set distances. Select the letter size corresponding to the line including or immediately above the plotted point. When a sign is intended to serve both approaches, plot a point for each approach and select the larger letter size.



Chapter 146 WIRELESS COMMUNICATIONS FACILITIES

Sec. 146-1. Purpose and Intent.

The purposes and intent of this chapter are to:

(1) Promote the health, safety and general welfare of the public by regulating the siting of wireless communication facilities, including satellite earth stations;
(2) Minimize the impacts of wireless communication facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
(3) Encourage the location and collocation of wireless communication equipment on existing structures thereby minimizing new visual, aesthetic and public safety impacts, effects upon the natural environment and wildlife, and to reduce the need for additional antenna-supporting structures;
(4) Accommodate the growing need and demand for wireless communication services;
(5) Encourage coordination among suppliers of wireless communication services in the county;
(6) Protect the character, scale, stability, and aesthetic quality of the residential districts of the county by imposing certain reasonable restrictions on the placement of certain satellite earth stations;
(7) Respond to the policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless service or to prohibit or have the effect of prohibiting personal wireless service in the county;
(8) Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulation; and
(9) Establish review procedures to ensure that applications for wireless communications facilities are reviewed and acted upon within a reasonable period of time.

Sec. 146-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ancillary structures means forms of development associated with a wireless communications facility, including, but not limited to: foundations, concrete slabs on grade, guy wire anchors, generators, and transmission cable supports; however, specifically excluding equipment enclosures.

Antenna means any apparatus designed for the transmitting and/or receiving of electromagnetic waves that includes, but is not limited to: telephonic, radio or television communications. Types of antennas include, but are not limited to: omni-directional (whip) antennas, sectorized (panel) antennas, multi- or single-bay (FM and TV), yaggie, or parabolic (dish) antennas.

Antenna array means a single or group of antennas and their associated mounting hardware, transmission lines, or other appurtenances that share a common attachment device such as a mounting frame or mounting support.

Antenna-supporting structure means a vertical projection composed of metal, wood, or other substance with or without a foundation that is for the express purpose of accommodating antennas at a desired height above grade. Antenna-supporting structures do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than 20 feet.

Anticlimbing device means pieces of equipment that are either attached to antenna-supporting structure, or which are freestanding and are designed to prevent people from climbing the structure. These devices may include, but are not limited to, fine mesh wrap around structure legs, squirrel-cones, the removal of climbing pegs on monopole structures, or other approved devices, but excluding the use of barbed wire.

Attached wireless communication facility means an antenna or antenna array that is attached to an existing building with any accompanying pole or device that attaches it to the building, transmission cables, and an equipment enclosure, which may be located either inside or outside of the existing building. An attached wireless communications facility is considered to be an accessory use to the existing principal use on a site.

Collocation means a situation in which two or more different wireless communication service providers place wireless communication antenna on a common antenna-supporting structure. The term collocation includes combined antennas. The terms collocation and combined antenna shall not be applied to a situation where two or more wireless communications service providers independently place equipment on an existing building.

Combined antenna means an antenna or antenna array designed and used to provide services for more than one carrier.

Conical zone means an area that extends outward from the outer edge of the horizontal zone with a radius distance equivalent to 5,280 feet.

Development area means the area occupied by a wireless communications facility including areas inside or under the following: an antenna-supporting structure's framework, equipment enclosures, ancillary structures, and accessways.

Eligible facilities request means any request for modification of an existing wireless tower or base station (antenna-supporting structure) that involves collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment. [U.S.C. Section 1455(a)].

Equipment enclosure means any structure above the base flood elevation including: cabinets, shelters (pre-fabricated or otherwise), pedestals, and other similar structures. Equipment

enclosures are used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communication signals not for the storage of equipment nor as habitable space.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Glide path means a ratio equation used for the purposes of limiting the overall height of vertical projections in the vicinity of private airports. The ratio limits each foot of height for a vertical projection based upon a horizontal distance measurement.

Guyed means a style of antenna-supporting structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of guy wires that are connected to anchors placed in the ground or on a building.

Horizontal zone means an area longitudinally centered on the perimeter of a private airport's runway that extends outward from the edge of the primary surface a distance equivalent to 5,280 feet.

Lattice means a style of antenna-supporting structure that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed strips or bars to support antennas.

Monopole means a style of freestanding antenna-supporting structure that is composed of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of antenna-supporting structure is designed to support itself without the use of guy wires or other stabilization devices. These structures are mounted to a foundation that rests on or in the ground or on a building's roof.

Personal wireless service means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.

Primary surface means the area extending a distance of 50 feet to both sides of the centerline of a private airport's runway, and running the distance of the runway.

Public antenna-supporting structure means an antenna-supporting structure, appurtenances, equipment enclosures, and all associated ancillary structures used by a public body or public utility for the purposes of transmission and/or reception of wireless communication signals associated with, but not limited to: public education, parks and recreation, fire and police protection, public works, and general government.

Radio frequency emissions means any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna-supporting structure, building, or other vertical projection.

Replacement means the construction of a new antenna-supporting structure built to replace an existing antenna-supporting structure.

Satellite earth station means a single or group of satellite parabolic (or dish) antennas. These dishes are mounted to a supporting device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A satellite earth station may include the associated separate equipment enclosures necessary for the transmission or reception of wireless communications signals with satellites.

Stealth wireless communications facility means a wireless communications facility, ancillary structure, or equipment enclosure that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed uses on a site. A stealth facility may have a secondary function, including, but not limited to, the following: church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole with a flag, etc.

Wireless communications facility (WCF) means any staffed or unstaffed facility for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennas, transmission cables, and equipment enclosures, and may include an antenna-supporting structure. The following developments shall be considered as a wireless communication facility: developments containing new or existing antenna-supporting structures, public antenna-supporting structures, replacement antenna-supporting structures, collocations on existing antenna-supporting structures, attached wireless communications facilities, stealth wireless communication facilities, and satellite earth stations.

Wireless communications means any personal wireless service, which includes, but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and paging. Wireless communications also includes radio and television broadcast services and other radio frequency signals, including those transmitted or received by a satellite earth station.

Sec. 146-3. Applicability.

(a) Except as provided for in subsection (b) of this section, this chapter shall apply to development activities including installation, construction, or modification to the following wireless communications facilities:

(1) Existing antenna-supporting structures;
(2) Proposed antenna-supporting structures;
(3) Public antenna-supporting structures;
(4) Replacement of existing antenna-supporting structures;
(5) Collocation on existing antenna-supporting structures;

(6) Attached wireless communications facilities;
(7) Stealth wireless communications facilities;
(8) Satellite earth stations; and
(9) Noncommercial amateur, ham radio, or citizen's band antenna-supporting structures with heights greater than 70 feet.

(b) The following items are exempt from the provisions of this chapter, notwithstanding the provisions contained in Chapter 6:

(1) Amateur radio antennas as provided in F.S. § 125.561;
(2) Satellite earth stations that are one meter or less in diameter and which are not greater than 35 feet above grade;
(3) Satellite earth stations that are two meters or less in diameter and that are located or proposed to be located in the following land use (zoning) districts: C1, C2, I, MI, SC, and UC;
(4) Regular maintenance of any existing wireless communications facility that does not include the placement of a new wireless communications facility;
(5) The substitution or change of existing antennas or other equipment on an existing antenna-supporting structure, provided the substituted antennas or equipment do not diminish the structural capacity of the antenna-supporting structure, and provided such change does not increase the overall height of the structure;
(6) Any existing or proposed antenna-supporting structure with an overall height of 70 feet or less above ground level; and
(7) A wireless communications facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity for the facility by the Director of Public Safety; except that such facility must comply with all federal and state requirements. No wireless communications facility shall be exempt from the provisions of this chapter beyond the duration of the state of emergency.

Sec. 146-4. Uses by Land Use District.

(a) Pursuant to Chapter 130, Article III, and except as provided in subsection (b) of this section, no wireless communications facility shall be permitted in a particular land use (zoning) district except in accordance with the table below:

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Land Use District	***New Antenna Supporting Structure***	***Replacement of Existing Antenna Supporting Structure***	***Collocation***	***As Accessory Use Only***		
				Attached Facility	***Stealth Facility***	***Satellite Earth Station***
AD	Prohibited	As-of-right	As-of-right	Minor	Minor	As-of-right
C1	Major	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
C2	Major	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
CD	Prohibited	Prohibited	As-of-right	Prohibited	Prohibited	Minor[3]
CFA	Major	As-of-right	As-of-right	Minor	Minor	Minor[3]
CFS[1]	Prohibited	Prohibited	As-of-right	Prohibited	Prohibited	Minor[3]
CFS[2]	Major	As-of-right	As-of-right	As-of-right	Minor	Minor[3]
CFV	Prohibited	As-of-right	As-of-right	Minor	Minor	Minor[3]
DR	Major	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
I	Minor	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
IS	Prohibited	Prohibited	As-of-right	Prohibited	Major	Minor[3]
MF	Major	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
MI	Minor	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
MN	Prohibited	Prohibited	As-of-right	Prohibited	Prohibited	Minor[3]
MU	Major	As-of-right	As-of-right	As-of-right	As-of-right	Minor[3]
NA	Prohibited	As-of-right	As-of-right	Minor	Minor	Minor[3]
OS	Prohibited	Prohibited	As-of-right	Prohibited	Prohibited	Minor[3]
PR	Prohibited	As-of-right	As-of-right	As-of-right	Minor	As-of-right
RV	Prohibited	As-of-right	As-of-right	Minor	Minor	Minor[3]
SC	Major	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
SR	Prohibited	As-of-right	As-of-right	Prohibited	Minor	Minor[3]
SR-L	Prohibited	As-of-right	As-of-right	Prohibited	Minor	Minor[3]
SS	Prohibited	Prohibited	As-of-right	Prohibited	Minor	Minor[3]
UC	Major	As-of-right	As-of-right	As-of-right	As-of-right	As-of-right
UR	Prohibited	As-of-right	As-of-right	As-of-right	Minor	Minor[3]
URM	Prohibited	As-of-right	As-of-right	Prohibited	Minor	Minor[3]
URM-L	Prohibited	As-of-right	As-of-right	Prohibited	Minor	Minor[3]
PD	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
[1] Includes the following commercial fishing special districts: 1, 2, 8, 12, 13, 16 and 20.						
[2] Includes the following commercial fishing special districts: 4, 5, 6, 7 and 17.						
[3] Satellite earth stations proposed in this land use (zoning) district that are less than 2.0 meters in diameter shall be allowed as-of-right.						

(b) Within the following districts, new antenna-supporting structures may be permitted as a major conditional use, provided that the antenna-supporting structure is owned by the county and is used exclusively for nonproprietary public safety communications: CD, MN, OS, and PR.

Sec. 146-5. Development Standards.

These standards shall apply to the following types of wireless communications facilities:

(a) New antenna supporting structures.

(1) Approval criteria for new antenna-supporting structures.

a. Setbacks.

1. New antenna-supporting structures and the associated ancillary structures are not considered as utilities, and therefore must meet the environmental design criteria related to wetland setbacks pursuant to Sections 118-7 and 118-10;

2. Any new antenna-supporting structures, equipment enclosures and ancillary structures shall meet the minimum setback requirements for the land use (zoning) district where they are located pursuant to Chapter 131 of this LDC;

3. New antenna-supporting structures constructed on properties that are contiguous to the IS, SR, UR or URM zones shall be set back from these zones a distance equal to 110 percent (110%) of the overall height of the antenna-supporting structure and antennas; and

4. New antenna-supporting structures shall be set back from the right-of-way of U.S. Highway 1 a distance equal to one-half (1/2) of the overall height of the antenna-supporting structure and antennas.

b. Height. The overall combined height of any antenna-supporting structure and any antenna(s) attached thereto shall not be greater than 199 feet, unless allowed by a variance approved pursuant to Section 146-7.

c. Construction. New antenna-supporting structures shall have a monopole type construction only, and shall not be guyed or have a lattice type construction; except that AM broadcast facilities may have a guyed type construction.

d. Structural integrity.

1. The entire antenna-supporting structure and all appurtenances shall be designed pursuant to the wind speed design requirements of ASCE 7-10, including any subsequent modification to those specifications;

2. A new antenna-supporting structure shall be designed to accommodate the wireless communications equipment of other wireless communication service providers. The exact amount of additional equipment to be accommodated shall be agreed upon during a pre-application conference and recorded in the letter of understanding (LOU) resulting from the conference; and

3. The antenna-supporting structure shall be designed to ensure that, in the event of structural failure, the facility will collapse within the boundaries of the property on which the facility is located. All owners of approved antenna-supporting structures are jointly and severally liable and responsible for any

damage caused to off-site property as a result of a collapse of any antenna-supporting structure owned by them.

e. Lighting.

1. Except as provided in subsection (a)(1)e.2. of this section, no lights, signals, or other illumination shall be permitted on any wireless communications facility or ancillary structure unless the applicant demonstrates that lighting is required by the FAA or the FCC.

2. Lighting may be placed in association with an approved equipment enclosure, but shall be placed only in accordance with the provisions of Sections 12-116 and 114-162. Lighting associated with an equipment enclosure shall remain unlit except when authorized personnel are present.

f. Collocation and combined antennas.

1. No antenna-supporting structure shall be permitted unless the applicant demonstrates that no existing wireless communications facility can accommodate the applicant's proposed facility through either collocation or a combined antenna; or that use of such existing facilities would prohibit personal wireless services in the area of the county to be served by the proposed antenna-supporting structure.

2. Evidence submitted to demonstrate that no existing wireless communications facility could accommodate the applicant's proposed facility through either collocation or a combined antenna may consist of any of the following:

i. No existing wireless communications facilities located within the geographic area meet the applicant's engineering requirements;

ii. Existing wireless communications facilities are not of sufficient height to meet the applicant's engineering requirements;

iii. Existing wireless communications facilities do not have sufficient structural strength to support the applicant's proposed wireless communications facilities and related equipment; or

iv. The applicant demonstrates that there are other limiting factors that render existing wireless communications facilities unsuitable.

g. Color. New antenna-supporting structures shall maintain a galvanized gray finish or other accepted contextual or compatible color, except as required by federal rules or regulations.

h. Radio frequency emissions. The radio frequency emissions shall comply with FCC standards for such emissions.

i. Intensity requirements.

1. For the purposes of impact fee calculation, the floor area for a wireless communications facility shall be considered as only the total square footage of all equipment enclosures; and
2. The following shall be considered as development area and shall be required to meet the setbacks and open space ratio requirements for the land use (zoning) district and/or habitat where they are located:
   i. The area beneath all equipment enclosures;
   ii. The area of the antenna-supporting structure foundation at or above grade;
   iii. The area beneath ancillary structures, excluding that which is beneath guy wires (if applicable); and
   iv. The area inside the antenna-supporting structure framework.

j. Security. Fencing, in accordance with Section 114-13, and/or anticlimbing devices shall be required to preserve security on wireless communication facilities.

k. Landscaping. Landscaping and/or screening in the form of at least a class D buffer as drawn in the class D bufferyard figure in Section 114-128 shall be required around the development area.

l. Signage. The only signage that is permitted upon an antenna-supporting structure, equipment enclosure, or fence (if applicable) shall be informational, and for the purpose of identifying the antenna-supporting structure, as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).

m. Aircraft obstruction. In addition to the provisions of Section 130-75, the overall height of a new antenna-supporting structure located in the vicinity of a private airport shall be limited by the following:
   1. A 35:1 glide path ratio in the horizontal zone limiting the heights of new antenna-supporting structures to 150 feet within one statutory mile (5,280 feet) from the edge of the private airport primary surface; and
   2. A 12:1 glide path ratio in the conical zone limiting the heights of new antenna-supporting structures to 600 feet within one statutory mile (5,280 feet) from the edge of the horizontal zone.

n. Adverse effects on adjacent properties and compatibility with community character.
   1. New antenna-supporting structures shall be configured and located in a manner that is consistent with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties pursuant to Section 110-67(2) and (3). The applicant shall demonstrate that alternative locations, configurations, and facility types have been examined and shall address in narrative form the feasibility of any alternatives that may have

fewer adverse effects on adjacent properties or that would be more compatible with the character of the community than the facility, configuration, and location proposed.

2. The following attributes shall be considered from vantage points within three miles of the base of the proposed antenna-supporting structure:

   i. Height;

   ii. Mass and scale;

   iii. Materials and color; and

   iv. Illumination.

(2) Submittal requirements for new antenna-supporting structure applications. The following documents shall be submitted:

a. A completed application form and any appropriate fees;

b. Three sets of signed and sealed site plans;

c. A property card for the subject property from the county's property appraiser's office or a tax bill showing the ownership of the subject parcel;

d. A form indicating that a property and/or antenna-supporting structure's owner's agent has authorization to act upon its behalf (if applicable);

e. A signed statement from the antenna-supporting structure's owner or owner's agent stating that the radio frequency emissions comply with FCC standards for such emissions;

f. Proof of an FCC license or construction permit to transmit radio signals in the county;

g. A stamped or sealed structural analysis of the proposed antenna-supporting structure prepared by a licensed state engineer indicating the proposed and future loading capacity of the antenna-supporting structure;

h. One original and two copies of a survey of the property completed by a licensed state engineer that shows all existing uses, structures, and improvements;

i. Three copies of a vegetation survey or habitat evaluation index (HEI);

j. Photo-simulated post construction renderings of the proposed antenna-supporting structure, equipment enclosures, and ancillary structures as they would look after construction from locations to be determined during the pre-application conference;

k. Proof of FAA compliance with subpart C of the Federal Aviation Regulations 14 CFR part 77, Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities;

l. A signed statement from the antenna-supporting structure owner agreeing to allow the collocation of other wireless equipment on the proposed antenna-supporting structure;

m. If required by the United States Fish and Wildlife Service, a letter indicating that the proposed antenna-supporting structure and appurtenances are in compliance with all applicable federal rules and regulations; and

n. All other documentation, evidence, or materials necessary to demonstrate compliance with the applicable approval criteria set forth in this chapter, including where applicable:

1. Existing wireless communications facilities to which the proposed facility will be a handoff candidate, including latitude, longitude, and power levels of each;

2. A radio frequency plot indicating the coverage of existing wireless communications sites, and that of the proposed site sufficient to demonstrate radio frequency search area, coverage prediction, and design radius;

3. A statement by a qualified professional engineer specifying the design structural failure modes of the proposed facility; and

4. Antenna heights and power levels of the proposed facility and all other facilities on the subject property.

(3) Pre-application conference. A pre-application conference is required for any new antenna-supporting structure. At the time a pre-application conference is held, the applicant shall demonstrate that the following notice was mailed, 15 days in advance of the pre-application conference (via certified mail) to all interested parties, including other wireless service providers licensed to provide service within the county as indicated on the list of wireless service providers and interested parties provided by the Monroe County Planning and Environmental Resources Department:

"Pursuant to the requirements of the Monroe County Land Development Regulations, (name of provider) is hereby providing you with notice of our intent to meet with the Monroe County Planning and Environmental Resources Department in a pre-application conference to discuss the location of a freestanding wireless communications facility that would be located at (location). In general, we plan to construct a support structure of feet in height for the purpose of providing (type of wireless service). Please inform us and the Planning and Environmental Resources Department if you have any desire for placing additional wireless facilities or equipment within two miles of our proposed facility. Please provide us with this information within ten business days after the date of this letter. Your cooperation is sincerely appreciated. Sincerely, (pre-application applicant, wireless provider)"

(b) Replacement of an existing antenna-supporting structure.

Monroe County shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The following guidelines address those requests that do substantially change the physical dimensions of a tower or base station:

(1) Approval criteria for replacement antenna-supporting structures. For a proposed replacement antenna-supporting structure to be approved, it shall meet the same approval criteria of subsections (a)(1)d., e, g.—j., and l. of this section, as well as the following:

a. Setbacks.

1. Any new equipment enclosures shall meet the minimum setback requirements for the land use (zoning) district where they are located pursuant to Chapter 131.

2. Replacement antenna-supporting structure foundations (excluding guy wire anchors) constructed on properties that are contiguous to the IS, SR, UR or URM zones shall not be any closer to these zones than the foundation of the original antenna-supporting structure being replaced.

3. Replacement antenna-supporting structure foundations (excluding guy wire anchors) constructed on properties that are contiguous to the right-of-way of U.S. Highway 1 shall not be any closer to such right-of-way than the foundation of the original antenna-supporting structure being replaced.

4. Replacement antenna-supporting structures and the associated ancillary structures shall meet the environmental design criteria related to wetland setbacks pursuant to Sections 118-7 and 118-10 to the maximum extent practicable.

b. Height.

1. Replacement antenna-supporting structures shall not exceed the height requirements set forth in subsection (a)(1)b. of this section, or the height of the antenna-supporting structure it is replacing, whichever is greater.

c. Construction. Subject to the height provisions of subsection (b)(1)b. of this section:

1. Replacement antenna-supporting structures with an overall height of greater than 199 feet, may be of the same construction type as the structure being replaced.

d. Landscaping. Landscaping and/or screening in the form of at least a class D buffer as drawn in the class D bufferyard figure in Section 114-128 shall be required around the development area to the maximum extent practicable.

(2) Submittal requirements for replacement antenna-supporting structure applications. For a proposed replacement antenna-supporting structure application to be considered

complete pursuant to Section 110-4, it shall contain the same submittal materials required in subsections (a)(2)a—i., k., l., and n. of this section.

(c) Collocations on an existing antenna-supporting structure.

Monroe County shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The following guidelines address those requests that do substantially change the physical dimensions of a tower or base station:

(1) Approval criteria for collocations on existing antenna-supporting structures. For a collocation on an existing antenna-supporting structure to be approved, it shall meet with the approval criteria of subsections (a)(1)i., j., and l. of this section, as well as the following:

a. Height. A collocation on an existing antenna-supporting structure shall not increase the overall height of the antenna-supporting structure.

b. Structural integrity. Any collocation on an existing antenna-supporting structure shall not impair the structure's ability to maintain the wind speed design requirements of ASCE 7-10, including any subsequent modification to those specifications.

c. Radio frequency emissions. The applicant shall demonstrate that radio frequency emissions comply with FCC standards for such emissions, taking into account all collocated wireless communications facilities placed or proposed for placement on the antenna-supporting structure.

(2) Submittal requirements for collocation on an existing antenna-supporting structure applications. For a collocation on an existing antenna-supporting structure application to be considered complete pursuant to Section 110-4, it shall contain submittal materials listed in subsections (a)(2)a.—f., and n. of this section, as well as the following:

a. A stamped or sealed structural analysis of the existing antenna-supporting structure prepared by a licensed state engineer indicating that the existing antenna-supporting structure as well as all existing and proposed appurtenances can withstand a peak wind speed gust equivalent to the original design criteria for the antenna-supporting structure; and

b. A copy of the lease or sublease between the owner of the antenna-supporting structure and the applicant seeking to place additional wireless equipment on the structure. Clauses related to lease term or rent may be deleted or censored.

(d) Attached wireless communications facilities.

(1) Approval criteria for attached wireless communications facilities. For a proposed attached wireless communications facility to be approved, it shall meet with the approval criteria listed in subsections (a)(1)h., i., and l. of this section, as well as the following:

a. Accessory use. An attached wireless communications facility shall be an accessory use as defined by Section 101-1.

b. Height.

1. The antenna, antenna array, attachment device, equipment enclosure and/or any ancillary equipment shall not extend above the ground by more than 70 feet.

2. Existing or proposed attached wireless communications facilities that project more than 70 feet above the ground shall be considered as an antenna-supporting structure and subject to the provisions for these types of uses pursuant to subsection (a) of this section.

c. Construction. Attached facilities may have a guyed, lattice, or monopole type construction, but in no case shall a lattice type construction exceed a height of ten feet from the base of the attached facility.

d. Color. All attached antenna or antenna arrays, equipment enclosures and ancillary equipment visible from outside the building where they are located shall be painted so as to blend in with the building where they are placed, except as required by federal rules or regulations.

e. Screening and placement.

1. Attached wireless communications facilities shall be screened by a parapet or other device so as to minimize its visual impact as measured from the boundary line of the subject property. Attached facilities shall be placed in the center of the building where reasonably possible so as to further minimize visual impact.

2. An attached wireless communications facility shall only be attached to a commercial, industrial, hotel, multifamily, institutional, or public building.

(2) Submittal requirements for attached wireless communications facility. For a proposed attached wireless communication facility application to be considered complete pursuant to Section 110-4, it shall contain submittal materials listed in subsections (a)(2)a.—f., h., and n. of this section.

(e) Stealth wireless communications facilities.

(1) Approval criteria for stealth wireless communications facilities. Setbacks shall be in accordance with the following provisions:

a. Environmental design criteria. Stealth facilities shall meet the environmental design criteria related to wetland setbacks pursuant to Section 118-10.

b. Minimum setback requirements. Stealth facilities shall meet the minimum setback requirements for the land use (zoning) district where they are located pursuant to Section 131-1.

c. Height. Stealth wireless communications facilities shall not exceed 100 feet in overall height.

d. Construction. No stealth wireless communications facility shall be guyed or have lattice type construction.

e. Accessory use. A stealth facility shall be an accessory use as defined by Section 101-1.

f. Structural integrity. The stealth facility shall be designed pursuant to the wind speed design requirements of ASCE 7-10, including any subsequent modification to those specifications.

g. Aesthetics. No stealth facility, whether fully enclosed within a building or otherwise, shall have antennas, antenna arrays, transmission lines, equipment enclosures or other ancillary equipment that is readily identifiable from the public domain as wireless communications equipment.

(2) Submittal requirements for stealth wireless communications facilities.

a. For a proposed stealth wireless communications facility application to be considered complete pursuant to Section 110-4, it shall contain submittal materials listed in subsections (a)(2)a.—i., and n. of this section, as well as a photo-simulated post construction renderings of the proposed stealth facility, equipment enclosures, and ancillary structures as they would look after construction from the public domain.

b. For a proposed stealth wireless communications facility that is not ground-mounted, the Planning Director may waive certain submittal requirements to reflect the necessary documentation required to demonstrate compliance with the provisions of this chapter.

(f) Satellite earth stations.

(1) Approval criteria for satellite earth stations. In order to advance the health, safety, and aesthetic objectives of this chapter, and in order to protect the residential character of certain land use (zoning) districts, the following restrictions shall apply:

a. Less than two meters. A proposed satellite earth station less than two meters in diameter shall conform with approval criteria listed in subsections (a)(1)a. and l. of this section.

b. Greater than or equal to two meters. A proposed satellite earth station greater than or equal to two meters in diameter, shall conform with approval criteria listed in subsections (a)(1)a., j., and l. of this section.

c. Height. The maximum height for any portion of a satellite earth station shall not exceed 35 feet.

d. Landscaping. For a proposed satellite earth station that is greater than or equal to two meters in diameter, a class A buffer shall be provided in accordance with Section 114-128, between the proposed facility and any adjacent residential uses and the public right-of-way.

e. Placement. The proposed satellite earth station shall not be placed in any front yard or a side yard that is adjacent to a public right-of-way.

f. Accessory use. A satellite earth station shall be approved only as an accessory use as defined by Section 101-1.

(2) Submittal requirements for satellite earth station applications.

a. For a proposed satellite earth station less than two meters in diameter, the applicant shall submit materials required by subsections (a)(2)a.—f., and n. of this section.

b. For a proposed satellite earth station greater than or equal to two meters in diameter, the applicant shall submit materials required by subsections (a)(2)a.—f., i., m., and n. of this section.

(3) Limited waiver of requirements.

a. The Planning Director may waive the requirements of this subsection (f) where an applicant for a satellite earth station demonstrates that compliance with these provisions will:

1. Materially limit transmission or reception by the proposed satellite earth station; or

2. Impose more than minimal costs on users of the facility.

b. However, the Planning Director may not waive any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited and that no more than minimal costs are incurred by the user to achieve such transmission or reception.

c. The Planning Director, in determining whether to waive certain requirements of this subsection (f), may consider the following:

1. The relative cost to the applicant to comply with these provisions in light of the costs associated with the installation of the satellite earth station;

2. The existing conditions on the subject property, both manmade and natural; and

3. The effect of a waiver on the public safety.

Sec. 146-6. Expert Review.

(a) Where due to the complexity of the methodology or analysis required to review an application for a wireless communication facility, the Planning Director may require a technical review by a third party expert, the costs of which shall be borne by the applicant. Third party review is required as part of the review for any variance application submitted pursuant to Section 146-7.

(b) The expert review may address any or all of the following:

(1) The accuracy and completeness of submissions;
(2) The applicability of analysis techniques and methodologies;
(3) The validity of conclusions reached;
(4) Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in this chapter; and
(5) Other matters deemed by the Planning Director to be relevant to determining whether a proposed wireless communications facility complies with the provisions of this chapter.

(c) Based on the results of the expert review, the Planning Director may require changes to the applicant's application or submittals.

(d) The applicant shall reimburse the County within five working days of the date of receipt of an invoice for expenses associated with the third party expert's review of the application. Failure by the applicant to make reimbursement pursuant to this section shall abate the pending application until paid in full.

Sec. 146-7. Variance.

(a) This section shall not apply to applications for satellite earth stations.

(b) Except as provided in subsection (a) of this section, the Planning Commission may grant variances from the height requirements set forth in this chapter. The Planning Commission, in granting or denying such a variance, shall consider whether the following conditions have been met:

(1) A determination that the granting of the variance will not result in additional public expenses that would not otherwise occur; create a nuisance; or cause fraud or victimization of the public;
(2) A determination that the variance sought is the minimum necessary to address the need for the variance, subsequent to exploring all reasonable siting alternatives;
(3) A determination that granting of the variance will not have a significant detrimental impact on adjacent property values; and

(4) A determination that granting of the proposed variance is consistent with the purpose and intent of this chapter.

(c) The Planning Commission, in determining whether the conditions for a variance have been met, shall consider the following factors relevant:

(1) Whether failure to grant the variance would prohibit or have the effect of prohibiting the provision of personal wireless services;
(2) Whether failure to grant the variance would unreasonably discriminate among providers of functionally equivalent personal wireless services;
(3) Physical characteristics of the proposed wireless communications facility for which the variance is requested;
(4) The importance to the community of the wireless communication services to be provided if the proposed variance is granted;
(5) The compatibility of the proposed variance with adjacent land uses and the availability of alternative sites and technologies in light of existing and permitted development in area;
(6) Whether granting of the proposed variance will obviate the need for additional new antenna-supporting structures due to increased collocation opportunities that would not be possible if the variance were not granted; and
(7) Whether granting of the proposed variance is necessary to ensure adequate public safety and emergency management communications.

(d) Unless provided simultaneously as part of an application for a wireless communications facility, any application for a variance from the height requirements set forth in this chapter shall include the submittal requirements set forth in Section 146-5(1)b. and any other materials or documentation required to demonstrate the applicability of the provisions of this section.

(e) All applications for a variance to the height requirements of this chapter shall be subject to third party expert review as set forth in Section 146-6, with all associated costs to be borne by the applicant. The third party expert shall analyze all required submittal materials to determine whether the criteria set forth in subsections (b) and (c) of this section have been met.

(f) No variance granted pursuant to this section shall be granted to allow an overall height of greater than 330 feet.

(g) The Planning Commission may allow either lattice or guyed type construction, where the applicant demonstrates that monopole construction is not feasible at the height allowed by an approved variance.

(h) Variances under this section shall be processed concurrently with an application for wireless communications facilities as provided for in this chapter.

Sec. 146-8. Abandonment.

(a) In the event all legally approved use of any wireless communications facility has been discontinued for a period of six months, the facility shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Planning Director who shall have the right to request documentation and/or affidavits from the facility owner regarding the issue of wireless communications facility usage, including evidence that use of the wireless communications facility is imminent.

(b) At such time as the Planning Director reasonably determines that a wireless communications facility is abandoned, the Planning Director shall provide the facility owner with written notice of an abandonment determination by certified mail. Failure or refusal by the owner to respond within 60 days of receipt of such notice, shall constitute prima facie evidence that the wireless communications facility has been abandoned.

(c) If the owner of the wireless communications facility fails to respond or fails to demonstrate that the wireless communications facility is not abandoned, the facility shall be considered abandoned and the owner of the facility shall have an additional 120 days within which to:

(1) Reactivate the use of the wireless communications facility or transfer the wireless communications facility to another owner who makes actual use of the facility within the 120-day period, or
(2) Dismantle and remove the wireless communications facility.

Sec. 146-9. Response Period and Appeal.

(a) Monroe County shall act in writing on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly made, taking into account the nature and scope of such request.
(b) Any person adversely affected by any final action or failure to act by Monroe County that is inconsistent with this chapter may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.

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