



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

To: Monroe County Planning Commission

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

From: Michael Roberts, Sr. Administrator of Environmental Resources

Date: February 4, 2019

Subject: *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND DEVELOPMENT CODE CREATING A DEFINITION OF NESTING AREA; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (File 2016-123)*

Meeting: February 27, 2019

I. REQUEST

The Monroe County Planning & Environmental Resources Department is proposing an amendment to Chapter 101-1 to amend the definition of *Nesting Areas* as follows:

Nesting Areas (for birds) means those areas that birds use for nesting. [This applies to wading birds, hawks, falcons, seabirds, shorebirds, and any bird species federally or state-listed as endangered, threatened, or a species of special concern. This definition does not apply to non-native invasive or nuisance species.](#)

II. BACKGROUND INFORMATION

The Board of County Commissioners of Monroe County, at a special meeting on January 14, 2015, unanimously passed a motion to direct staff to impose a temporary moratorium upon certain development applications of Offshore Islands due to pending legislation.

On December 10, 2014, the Board of County Commissioners directed that pending and proposed new Comprehensive Plan amendments specifically concerning Offshore Islands and building height restrictions be removed from the larger Comprehensive Plan update project and that each be considered as a separate and distinct comprehensive plan amendment to be voted upon and

submitted to the State of Florida separately from the rest of the cumulative Comprehensive Plan update project package.

The Planning Commission recommended revisions be made to Policy 206.1.2 specifying that the County Biologist will verify data and surveys submitted to document a bird rookery; and also recommended revisions be made to Policy 206.1.2 pertaining to including semi-colonial birds and recommended approval of the proposed amendments.

The Board of County Commissioners held a public hearing on July 20, 2016, to review and consider transmittal of proposed comprehensive plan amendments for offshore islands to the State Land Planning Agency and Reviewing Agencies as defined in Section 163.3184(1)(c), Florida Statutes for review and comment and voted to not transmit the proposed Comprehensive Plan Amendment and directed Staff to prepare the proposed amendments to the Land Development Code as necessary to provide suitable protections to the White Crowned pigeon and other applicable protected species.

Staff with the Planning & Environmental Resources Department held a Community Meeting in accordance with Section 102-158 on Thursday, October 11, 2018 at the Monroe County Government Center, Marathon, Florida at 5:30 p.m. (summary memo enclosed). No comments or recommendations were received for this amendment.

III. PROPOSED AMENDMENT

(Deletions are ~~stricken through~~ and additions are underlined.)

Based on the BOCC direction, the proposed amendment to Section 101-1 is below.

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:

Nesting Areas (for birds) means those areas that birds use for nesting. This applies to wading birds, hawks, falcons, seabirds, shorebirds, and any bird species federally or state-listed as endangered, threatened, or a species of special concern. This definition does not apply to non-native invasive or nuisance species.

IV. ANALYSIS OF PROPOSED AMENDMENT

As detailed in section II above, the proposed amendment to the Land Development Code is consistent with the 2030 Comprehensive Plan. The proposed amendment has been the subject of much public discussion and review, culminating in the July 20 BOCC meeting in which the Board directed staff to prepare the amendment to reflect the definition provided in the Glossary of the Comprehensive Plan. The proposed amendment was also evaluated for consistency with section 102-158 of the Land Development Code (below).

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

1. Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;
N/A
2. Changed assumptions (e.g., regarding demographic trends);
N/A
3. Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;
N/A
4. New issues;
The County is proposing text amendments to Section 101-1 to reflect the definition provided in the Glossary of the Comprehensive Plan. The proposed text amendment to Section 101-1 is necessary to be consistent with the comprehensive plan. Note, Sections 163.3194 and 163.3201, F.S., require land development regulations to be consistent with and implement the Comprehensive Plan.
5. Recognition of a need for additional detail or comprehensiveness; or
N/A
6. Data updates;
N/A
7. 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 Communities master plan pursuant to findings of the BOCC.

The proposed amendment will not result in an adverse community change to the areas it affects.

V. PROCESS

In accordance with Chapter 102-158(4) of the Land Development Code a Community Participation meeting as specified in Chapter 102-159 is required for proposals to amend the text of the Land Development Code. For text amendments, 102-159 requires that the Community Participation Meeting be conducted at least 3 months in advance of the first public hearing. As noted above the Community Participation Meeting for the proposed amendment was held on October 11, 2018, therefore the first public hearing for the amendments could not be conducted prior to the January __, 2019 Planning Commission meeting.

Pursuant to Section 102-158 of the Land Development Code, 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 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.

Following the BOCC public hearing:

- 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.

VI. STAFF RECOMMENDATION

Staff recommends APPROVAL of the proposed amendment.