



**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 MONROE COUNTY LAND DEVELOPMENT CODE CREATING A DEFINITION OF OFFSHORE ISLAND; AMENDING SECTION 118-10 OF THE LAND DEVELOPMENT CODE TO FURTHER CLARIFY THE DEVELOPMENT OF OFFSHORE ISLANDS; 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 2016-124)*

**Meeting:** February 27, 2019

**I. REQUEST**

The Monroe County Planning & Environmental Resources Department is proposing an amendment to Chapter 118-10 to further clarify the development of offshore islands.

**II. BACKGROUND INFORMATION**

**BOCC:**

At its regularly scheduled meeting on July 20, 2016, the Monroe County Board of County Commissioners reviewed the proposed text amendment, the Planning Commission's recommendation, provided for public review and comment and directed Staff to amend the Land Development Code in accordance with Policy 102.6.1 (below). The BOCC further directed Staff to amend the Code as necessary to provide suitable protections to the White Crowned pigeon and other applicable protected species.

**Policy 102.6.1**

Within one (1) year of the adoption of the Plan, Monroe County shall adopt land development regulations which will further restrict the activities permitted on offshore islands. These shall include the following:

1. development shall be prohibited on offshore islands (including spoil islands) which have been documented as an established bird rookery or nesting area based on resource agency best available data or surveys (See Conservation and Coastal Management Policy 206.1.2.);
2. new resource extraction pits shall be prohibited on offshore islands;
3. campgrounds and marinas shall not be permitted on offshore islands; however, temporary primitive camping by the owner, in which no land clearing or other alteration of the island occurs, shall be the only use of an offshore island which may occur without necessity of a permit;
4. the use of any motorized vehicles including, but not limited to, trucks, carts, buses, motorcycles, all-terrain vehicles and golf carts shall be prohibited on offshore islands that do not contain any development;
5. planting with native vegetation shall be encouraged whenever possible on spoil islands; and
6. County public facilities and services, excluding electricity over which the Public Services Commission of the State of Florida exercises jurisdiction, shall not be extended to offshore islands. The extension of public facilities shall be required to comply with Policy 101.12.2.

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).

### III. PROPOSED AMENDMENT

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

**Based on the BOCC direction, the proposed amendments to Section 101-1 and 118-10 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:

\*\*\*\*\*

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.

Offshore Island means an area of land, surrounded by water, which is not directly or indirectly connected to U.S. 1 by a bridge, road or causeway.

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).

\*\*\*\*\*

**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) *Offshore Islands.* All structures developed, used or occupied on land classified as an Offshore Island shall be designed, located and constructed such that:

1. development shall be prohibited on offshore islands (including spoil islands) which have been documented as an established bird rookery or nesting area based on resource agency best available data or surveys (See Conservation and Coastal Management Policy 206.1.2.);

2. new resource extraction pits shall be prohibited on offshore islands;

3. campgrounds and marinas shall not be permitted on offshore islands; however, temporary primitive camping by the owner, in which no land clearing or other alteration of the island occurs, shall be the only use of an offshore island which may occur without necessity of a permit;

4. the use of any motorized vehicles including, but not limited to, trucks, carts, buses, motorcycles, all-terrain vehicles and golf carts shall be prohibited on offshore islands that do not contain any development;

5. planting with native vegetation shall be encouraged whenever possible on spoil islands; and

6. County public facilities and services, excluding electricity over which the Public Services Commission of the State of Florida exercises jurisdiction, shall not be extended to offshore islands. The extension of public facilities shall be required to comply with Policy 101.12.2.

- (e) *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(1) (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:

**ITEM #15 2018-129 NROGO Qtr 2 Yr 27  
Staff Report**

- 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.

#### IV. ANALYSIS OF PROPOSED AMENDMENT

As detailed in section II above, the proposed amendment to the Land Development Code is required by the 2030 Comprehensive Plan. The proposed amendment has been the subject of much public discussion and review, culminating in the July 20, 2016 BOCC meeting in which the Board directed staff to prepare the amendment to reflect the requirements of Policy 102.6.1. 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;  
N/A
5. Recognition of a need for additional detail or comprehensiveness; or  
The County is proposing text amendments to Section to Chapter 118-10 to further clarify the development of offshore islands as directed by the BOCC.
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 CommuniKeys 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.

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.

