February 20, 2014

William B. Killingsworth, Director of Community Development
Florida Department of Economic Opportunity
107 E. Madison Street
Caldwell Building, MSC 160
Tallahassee, FL 23299

Dear Mr. Killingsworth:

Administration Commission Rule 28-20.140, F.A.C., which was ratified by the Legislature in 2011, includes six Work Program Tasks [28-20.140(5)(a)1, 2, 3, 4, 5, and 6] requiring the County to adopt policies relating to the Tier System into the Comprehensive Plan, adjust Tier boundaries on the Tier Zoning Overlay maps [(5)(a)2] and amend its Comprehensive Plan to adopt the Tier System Maps as an overlay onto the Future Land Use Map (FLUM) Series [(5)(a)1, 3 and 4].

Previously the County sent a letter to the Administration Commission, dated August 22, 2013 (attached), requesting that Rule 28-20.140, F.A.C. be amended to remove the requirement to adopt the Tier Overlay Zoning Maps into the Comprehensive Plan [28-20.140(5)(a)1, 3 and 4].

Since that time, the Monroe County Attorney and Growth Management staff have met with staff within your department to discuss this request. Department of Economic Opportunity (DEO) staff have requested that Monroe County amend its requests to include both a Rule amendment and Comprehensive Plan amendment to include the following language: Prior to the County adopting a resolution recommending the removal of the designation of Monroe County as an Area of Critical State Concern, pursuant to Section 380.0552(4)(b)3, F.S., Monroe County shall adopt the Tier Maps into the Comprehensive Plan as an overlay to the Future Land Use Map.
The County continues to make progress in achieving the Administration Commission’s Work Program and we are pleased to continue to work with you and DEO to protect all significant resources of the Florida Keys and maintain our economic prosperity.

Thank you for your consideration.

Sincerely,

Sylvia Murphy, Mayor
Monroe County Board of County Commissioners

CC: Mayor Pro Tem Danny Kolhage
Commissioner David Rice
Commissioner George Neugent
Commissioner Heather Carruthers
Roman Gastesi, County Administrator
Bob Shillinger, County Attorney
Christine Hurley, Growth Management Director
Jesse Panuccio, Executive Director, Florida DEO
Robert N. Sechen, General Counsel, Florida DEO
Rebecca Jetton, Area of Critical State Concern Administrator, Florida DEO
The Honorable Rick Scott, Governor
Pam Bondi, Attorney General
Adam Putnam, Commissioner of Agriculture
Jeff Atwater, Chief Financial Officer

Enclosures: August 22, 2013, Monroe County letter to the Administration Commission
August 22, 2013

Dear Governor and Cabinet:

Administration Commission Rule 28-20.140, F.A.C., which was ratified by the Legislature in 2011, includes six Work Program Tasks [28-20.140(5)(a)(1), 2, 3, 4, 5, and 6] requiring the County to adopt policies relating to the Tier System into the Comprehensive Plan, adjust Tier boundaries on the Tier Zoning Overlay maps [(5)(a)(2)] and amend its Comprehensive Plan to adopt the Tier System Maps as an overlay onto the Future Land Use Map (FLUM) Series [(5)(a)(3) and 4].

Monroe County has completed Work Program task (5)(a)2 with the adoption of four (4) ordinances [Ordinance 005-2011, 006-2011, 007-2011, and 008-2011] on May 4, 2011, revising or assigning the tier overlay designation for 3,394 parcels based upon recommendations from the Tier Designation Review Committee Work Group, Monroe County staff, the Planning Commission, Board of County Commissioners and the public. The Administration Commission and the Department of Economic Opportunity (DEO) have also reported that the County has completed Work Program task (5)(a)2, which is to amend the Tier Overlay Maps to more accurately reflect the criteria for each Tier as amended by Final Order DCA07-GM166 (DOAH Case No. 06-2449GM — Petitioners: Florida Keys Citizens Coalition, Inc., Protect Key West and the Florida Keys, Inc, and Last Stand; Respondents: Department of Community Affairs and Monroe County).

The County processed additional revisions to the tier designations for 393 parcels that were not included in the challenge (DOAH Case No. 06-2449GM) but requested by the plaintiff. Further, the County identified 77 offshore island parcels for review because these parcels were not given a tier designation at the time of the adoption of the original Tier Ordinances in 2006. These were adopted by the Board of County Commissioners on March 20, 2013. The amendments (Ordinances 14-2013 and 15-2013) have been approved by DEO and became effective on July 12, 2013.

At this point, all 44,000 parcels in the County presently have a Tier designation. Throughout the process of updating information and adopting the tier amendments, the County was concerned with the possibility of new administrative proceedings pursuant to Section 120.569 and 120.57, F.S., which could delay the effectiveness of the ordinances and create significant cost and legal demands on the County.

The County could not proceed with the next steps of completing Work Program Tasks (5)(a)1, 3 and 4 to adopt of the entire set of Tier Overlay maps into the Comprehensive Plan as an overlay to the FLUM until all 44,000 parcels had an effective tier designation. Now that all of the undesignated or invalidated parcels have a tier designation and are effective as an overlay district on the County's Land Use District (Zoning) Maps, starting the process over and
adopting the maps (approximately 44,000 parcels) as a Comprehensive Plan FLUM overlay district would expose the County and every parcel with a Tier designation to potential challenges by affected persons, as defined by Section 163.3184(1)(a), F.S. County legal staff has studied the legal differences in the maps being in the Comprehensive Plan and Land Use District (Zoning) Maps. A legal opinion is attached.

On July 17, 2013, the Monroe County Board of County Commissioners discussed the requirement of the Administration Commission Rule to adopt the Tier Overlay Zoning Maps into the Comprehensive Plan. This discussion included the significant exposure (including restarting the appeal clock and adding possible takings claims against the County), costs, personnel demands and attorney fees to the County. Further discussing the duplication of maps in the Comprehensive Plan and Zoning Maps seems to be unnecessary and a redundant process when DEO reviews both FLUM and Zoning Maps in an Area of Critical State Concern and has the ability to approve or reject proposed zoning map amendments or file a petition with the Division of Administrative Hearings on a proposed FLUM amendment.

Following a presentation by County Growth Management and legal staff, the BOCC unanimously approved a motion to direct staff to write a letter to the Administration Commission to request that Rule 28-20.140, F.A.C. be amended to remove the requirement to adopt the Tier Overlay Zoning Maps into the Comprehensive Plan.

Monroe County respectfully requests the Administration Commission consider amending Rule 28-20.140 F.A.C., to delete Work Program Tasks (5)(a)1, 3 and 4:

1. By July 1, 2012, Monroe County shall adopt the conservation planning mapping (the Tier Zoning Overlay Maps and System) into the Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee with the adjusted Tier boundaries.
2. By July 1, 2012, Monroe County shall adjust the Tier I and Tier IIIA (SPA) boundaries to more accurately reflect the criteria for that Tier as amended by Final Order DCA07-GM166 and implement the Florida Keys Carrying Capacity Study, utilizing the updated habitat data, and based upon the recommendations of the Tier Designation Review Committee Work Group.
3. By July 1, 2012, Monroe County shall adopt Policy 106.2.1 to require the preparation of updated habitat data and establish a regular schedule for continued update to coincide with evaluation and appraisal report timelines.
4. By July 1, 2012, Monroe County shall adopt Policy 106.2.2 to establish the Tier Designation Work Group Review Committee to consist of representatives selected by the Florida Department of Community Affairs from Monroe County, Florida Fish & Wildlife Conservation Commission, United States Fish & Wildlife Service, Department of Environmental Protection and environmental and other relevant interests. This Committee shall be tasked with the responsibility of Tier designation review utilizing the criteria for Tier placement and best available data to recommend amendments to ensure implementation of and adherence to the Florida Keys Carrying Capacity Study. These proposed amendments shall be recommended during 2009 and subsequently coincide with the Evaluation and Appraisal report timelines beginning with the second Evaluation and Appraisal review which follows the adoption of the revised Tier System and Maps as required above adopted in 2011. Each evaluation and appraisal report submitted following the 2011 evaluation and appraisal report shall also include an analysis and recommendations based upon the process described above.
These tasks require the adoption of policies which require the continued update of the habitat data and the adjustment to the tier boundaries, coinciding with the State Evaluation and Appraisal Report timelines, following a review by the Tier Designation Review Committee Work Group.

The County continues to make progress in achieving the Administration Commission's Work Program and we are pleased to continue to work with you and DEO to protect all significant resources of the Florida Keys and maintain our economic prosperity. Thank you for your consideration.

Sincerely,

George Neuger, Mayor
Monroe County Board of County Commissioners

CC: Mayor Pro Tem Heather Carruthers
Commissioner David Rice
Commissioner Sylvia Murphy
Commissioner Danny Kolhage
Roman Gastesi, County Administrator
Bob Shillinger, County Attorney
Christine Hurley, Growth Management Director
Jesse Panuccio, Executive Director, Florida DEO
Robert N. Sechen, General Counsel, Florida DEO
William B. Killingsworth, Director of Community Development, Florida DEO
Rebecca Jetton, Area of Critical State Concern Administrator, Florida DEO

Enclosures: Legal Opinion
Rule 28-20.140, F.A.C.
BOCC AIS, Item
MEMORANDUM

TO: Christine Hurley, Growth Management Director

FROM: Susan Grimley, Assistant County Attorney

DATE: August 13, 2013

RE: Standing of Affected Persons to Challenge FLUM Overlay

You requested an explanation of the process for challenging a countywide zoning map amendment in the County’s Land Development Regulators as opposed to challenging a future land use map amendment, and who may challenge each type of amendment.

For purposes of this memo, I will assume you are talking about adoption of the Tier Overlay Maps in the Monroe County Land Development Regulations on the Land Use District (Zoning) Map, which was recently completed, and the adoption of a tier overlay on the Monroe County Future Land Use Map as part of the Monroe County Year 2010 Comprehensive Plan. The initial Tier Maps were adopted in 2006 by Ordinance 013-2006 along with other land development regulations implementing their use. Environmental groups whose “substantial interests” could have been adversely affected challenged the consistency of the criteria and the mapping with the Comprehensive Plan.

The completion of the final tier map amendments was accomplished by the adoption of Ordinances 014-2013 and 015-2013, which included other parcels that the challengers wanted reviewed along with some un-tiered properties. The entire process for all 44,000 parcels to be assigned a tier and be effective took approximately 7 years.

1. Land Development Regulations and Challenges

In an area of critical state concern, land development regulations are reviewed by the state land planning agency and a final order is published in the Florida Administrative Register. The tier maps, as part of the

land development regulations, may be challenged by filing a petition pursuant to Chapter 120, Section 120.57.²

The challenge must be filed within 21 days of publication. Pursuant to Florida Statutes, Section 120.569, the proceedings under Chapter 120 may be used in all proceedings in which the "substantial interests" of a party are determined by an agency. To be a substantially interested party it must be shown that: (1) The party will suffer injury-in-fact which is of sufficient immediacy to entitle him to a hearing, and (2) the party's substantial injury is of a type or nature which the proceeding is designed to protect.³

There are further requirements for standing of an association to show it is substantially affected. Those requirements are: (1) A substantial number of its members, although not necessarily a majority, are substantially affected; (2) The subject matter is within the association's general scope of interest and activity; (3) The relief is of the type appropriate for an association to receive on behalf of its members.⁴

There is, in the case of a challenge to land development regulations, at least some requirement of an injury for individual standing and the standing of associations, and therefore, some limitation on standing to challenge the County's Land Development Regulations pursuant to Florida Statutes, Section 380.05(6) and Florida Statutes, Chapter 120.

The state land planning agency has the burden of proving the validity of the final order.

2. Challenges to the Comprehensive Plan including the Future Land Use Map

"No proposed local government comprehensive plan or plan amendment that is applicable to a designated area of critical state concern shall be effective until a final order is issued finding the plan or amendment to be in compliance as defined in paragraph (1)(b)."³

Challenges to the comprehensive plan are brought pursuant to Florida Statutes, Section 163.3184,⁶ which states as follows:

(5) Administrative Challenges to Plans and Plan Amendments.

(a) Any affected person as defined in paragraph (1)(a) may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy served on the affected local government, to request a formal hearing to challenge whether the plan or plan amendments are in compliance as defined in paragraph (1)(b). This petition must be filed with the division within 30 days after the local government adopts the amendment. The state land planning agency may not intervene in a proceeding initiated by an affected person.

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² Id. ("No proposed land development regulation within an area of critical state concern becomes effective under [§380.05(6)] until the state land planning agency issues its final order or, if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120.").
⁴ See Melzer et al., supra note 3, at 12; see also Rosenzweig v. DOT, 979 So. 2d 1050 (Fla. Dist. Ct. App. 1st Dist. 2008); see also NAACP v. Fla. Bd. of Regents, 822 So. 2d 1 (Fla. Dist. Ct. App. 1st Dist. 2002); see also Fla. Home Builders Asso v. Dep't of Labor & Employment Sec., 412 So. 2d 351 (Fla. 1982).
⁶ See Fla. Stat. §163.3184(5); see also Fla. Stat. §380.05(6) (2012).
The definition is provided in Florida Statutes, Section 163.3184 as follows:

(1) Definitions.—As used in this section, the term:

(a) “Affected person” includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction.

(b) Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

The definition of “affected person” as provided in the statute is broader than those of a person whose “substantial interests” are affected for a challenge to the ordinances which approved the Tier Maps in the Monroe County Land Development Regulations since the definition of an affected person for purposes of challenging a comprehensive plan amendment requires only residency, property ownership, or operation of a business within the boundaries of the local government or jurisdiction, whereas a challenger to a Land Development Regulation must demonstrate some sort of injury to establish standing. Clearly, the category of challengers to a comprehensive plan amendment is far more expensive than what is usually required in a Chapter 120 proceeding.

Public participation in the Tier Map process will not be inconsequential as demonstrated by the “re-tiering” hearings after the challenge in 2006 resulted in new map adoption hearings. The requirement to have made comments during the comment period provided will not deter citizens from qualifying under the statute. This will open the door to more challenges to the adoption of the tier maps into the comprehensive plan than the adoption of the tier maps into the land development code. More persons may be statutorily permitted to file a challenge.

Please note that the challenge to a comprehensive plan amendment is not dependent on the Notice of Intent from the Department of Economic Opportunity, but simply has to be done within 30 days of the adoption of the amendment. The state land planning agency may not intervene in an action by an affected party; the County is left to defend the adoption.⁷

28-20.140 Comprehensive Plan.

(1) The Monroe County Comprehensive Plan Policy Document, as the same exists on January 1, 2011, is hereby amended to read as follows:

(2) Policy 101.2.13 Monroe County Work Program Conditions and Objectives.

(a) Monroe County shall establish and maintain a Permit Allocation System for new residential development. The Permit Allocation System shall supersede Policy 101.2.1.

(b) The number of permits issued annually for residential development under the Rate of Growth Ordinance shall not exceed a total annual unit cap of 197, plus any available unused ROGO allocations from a previous ROGO year. Each year’s ROGO allocation of 197 units shall be split with a minimum of 71 units allocated for affordable housing in perpetuity and market rate allocations not to exceed 126 residential units per year. Unused ROGO allocations may be retained and made available only for affordable housing and Administrative Relief from ROGO year to ROGO year. Unused allocations for market rate shall be available for Administrative Relief. Any unused affordable allocations will roll over to affordable housing. A ROGO year means the twelve-month period beginning on July 13.

(c) This allocation represents the total number of allocations for development that may be issued during a ROGO year. No exemptions or increases in the number of allocations may be allowed, other than that which may be expressly provided for in the comprehensive plan or for which there is an existing agreement as of September 27, 2005, for affordable housing between the Department and the local government in the critical areas.

(d) Through the Permit Allocation Systems, Monroe County shall direct new growth and redevelopment to areas served or that would be served by a central sewer system by December 2015 that has committed or planned funding. Committed or planned funding is funding that is financially feasible and reflected in a Capital Improvements Element approved by the Department of Community Affairs. Prior to the ranking and approval of awards for an allocation authorizing development of new principal structures, Monroe County, shall coordinate with the central wastewater facility provider and shall increase an applicant’s score by four points for parcels served by a collection line within a central wastewater facility service area where a central wastewater treatment facility has been constructed that meets the treatment standards of Section 403.086(10), F.S., and where treatment capacity is available. The points shall only be awarded if a construction permit has been issued for the collection system and the parcel lies within the service area of the wastewater treatment facility.

(3) Reporting and Oversight.

(a) Beginning November 30, 2011, Monroe County and the Department of Community Affairs shall annually report to the Administration Commission documenting the degree to which the work program objectives for the work program year have been achieved. The Commission shall consider the findings and recommendations provided in those reports and shall determine whether progress has been achieved. If the Commission determines that progress has not been made, the unit cap for residential development shall be reduced by 20 percent for the following ROGO year.

(b) If the Commission determines that progress has been made for the work program year, then the Commission may restore the unit cap for residential development for the following year up to a maximum of 197 allocations per ROGO year.

(c) Notwithstanding any other date set forth in this plan, the dates set forth in the work program shall control where conflicts exist.

(d) Wastewater treatment and disposal in Monroe County is governed by the requirements of Sections 381.0065(4) and 403.086(10), F.S. Nothing in this rule shall be construed to limit the authority of the Department of Environmental Protection or the Department of Health to enforce Sections 381.0065(4) and 403.086(10), F.S.


For the purposes of hurricane evacuation clearance time modeling purposes, clearance time shall begin when the Monroe County Emergency Management Coordinator issues the evacuation order for permanent residents for a hurricane that is classified as a Category 3-5 wind event or Category C-E surge event. The termination point shall be U.S. Highway One and the Florida Turnpike in Homestead/Florida City.

(5) WORK PROGRAM.

(a) Carrying Capacity Study Implementation.

1. By July 1, 2012, Monroe County shall adopt the conservation planning mapping (the Tier Zoning Overlay Maps and System) into the Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee with the adjusted Tier boundaries.
By July 1, 2012, Monroe County shall adjust the Tier I and Tier IIIA (SPA) boundaries to more accurately reflect the criteria for that Tier as amended by Final Order DCA07-GM166 and implement the Florida Keys Carrying Capacity Study, utilizing the updated habitat data, and based upon the recommendations of the Tier Designation Review Committee Work Group.

By July 1, 2012, Monroe County shall create Goal 106 to complete the 10 Year Work Program found in Rule 28-20.110, F.A.C., and to establish objectives to develop a build-out horizon in the Florida Keys and adopt conservation planning mapping into the Comprehensive Plan.

By July 1, 2012, Monroe County shall create Objective 106.2 to adopt conservation planning mapping (Tier Maps) into the Monroe Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee Work Group.

By July 1, 2012, Monroe County shall adopt Policy 106.2.1 to require the preparation of updated habitat data and establish a regular schedule for continued update to coincide with evaluation and appraisal report timelines.

By July 1, 2012, Monroe County shall adopt Policy 106.2.2 to establish the Tier Designation Work Group Review Committee to consist of representatives selected by the Florida Department of Community Affairs from Monroe County, Florida Fish & Wildlife Conservation Commission, United States Fish & Wildlife Service, Department of Environmental Protection and environmental and other relevant interests. This Committee shall be tasked with the responsibility of Tier designation review utilizing the criteria for Tier placement and best available data to recommend amendments to ensure implementation of and adherence to the Florida Keys Carrying Capacity Study. These proposed amendments shall be recommended during 2009 and subsequently coincide with the Evaluation and Appraisal report timelines beginning with the second Evaluation and Appraisal review which follows the adoption of the revised Tier System and Maps as required above adopted in 2011. Each evaluation and appraisal report submitted following the 2011 evaluation and appraisal report shall also include an analysis and recommendations based upon the process described above.

By July 1, 2012 and each July thereafter, Monroe County and the Monroe County Land Authority shall submit a report annually to the Administration Commission on the land acquisition funding and efforts in the Florida Keys to purchase Tier I and Big Pine Key Tier II lands and the purchase of parcels where a Monroe County building permit allocation has been denied for four (4) years or more. The report shall include an identification of all sources of funds and assessment of fund balances within those sources available to the County and the Monroe County Land Authority.

By July 1, 2012, Monroe County shall adopt Land Development Regulations to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas or Tier I lands unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any county, state, federal or any private entity. The County shall develop a mechanism to routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least 6 months prior to the deadline for administrative relief.

By July 1, 2012, in order to implement the Florida Keys Carrying Capacity Study, Monroe County shall adopt a Comprehensive Plan Policy to discourage private applications for future land use changes which increase allowable density/intensity.

By July 1, 2011, Monroe County shall evaluate its land acquisition needs and state and federal funding opportunities and apply annually to at least one state or federal land acquisition grant program.

By July 1, 2012, Monroe County shall enter into a memorandum of understanding with the Department of Community Affairs, Division of Emergency Management, Marathon, Islamorada, Key West, Key Colony Beach, and Layton after a notice and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the Department to accurately depict evacuation clearance times for the population of the Florida Keys.

By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding to complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the Department of Community Affairs and each municipality in the Keys.

By July 1, 2012, the County and the Department of Community Affairs shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities
Survey, Bureau of Economic and Business Research, and other studies). The County shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.

14. By July 1, 2012, the Department of Community Affairs shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The Department will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24 hour evacuation clearance time. If necessary, the Department of Community Affairs shall work with each local government to amend the Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.

15. By July 1, 2013, if necessary, the Department of Community Affairs shall work with each local government to amend the Comprehensive Plan to reflect revised allocation rates and distribution or propose rule making to the Administration Commission.

(b) Wastewater Implementation.

1. By July 1, 2011, Monroe County shall annually evaluate and allocate funding for wastewater implementation. Monroe County shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. By December 1, 2013, Monroe County shall work with the owners of wastewater facilities and onsite systems throughout the County and the Department of Health (DOH) and the Department of Environmental Protection (DEP) to fulfill the requirements of Sections 403.086(10) and 381.0065(3)(b) and (4)(l), F.S., regarding implementation of wastewater treatment and disposal. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet the 2015 treatment and disposal standards.

3. By July 1, 2011, Monroe County shall annually draft a resolution requesting the issuance of $50 million of the $200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.

4. By July 1, 2011, Monroe County shall develop a mechanism to provide accurate and timely information and establish the County’s annual funding allocations necessary to provide evidence of unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.

5. By July 1, 2011, Monroe County shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.

6. By July 1, 2011, Monroe County shall develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities.

7. By December 1, 2013, the County shall provide a report of addresses and the property appraiser’s parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department, Department of Environmental Protection, and the Department of Community Affairs. This report shall describe the status of the County’s enforcement action.

(c) Wastewater Project Implementation.

1. Key Largo Wastewater Treatment Facility. Key Largo Wastewater Treatment District is responsible for wastewater treatment in its service area and the completion of the Key Largo Wastewater Treatment Facility.
   a. By July 1, 2012, Monroe County shall complete construction of the South Transmission Line;
   b. By July 1, 2013, Monroe County shall complete design of Collection basin C, E, F, G, H, I, J, and K;
   c. By July 1, 2012, Monroe County shall complete construction of Collection basins E-H;
   d. By December 1, 2011, Monroe County shall schedule construction of Collection basins I-K;
   e. By July 1, 2011, Monroe County shall complete construction of Collection basins I-K;
   f. By July 1, 2011, Monroe County shall complete 50% of hook-ups to Key Largo Regional WWTP;
   g. By July 1, 2012, Monroe County shall complete 75% of hook-ups to Key Largo Regional WWTP;
   h. By July 1, 2013, Monroe County shall complete all remaining connections to Key Largo Regional WWTP.

2. Hawk’s Cay, Duck Key and Conch Key Wastewater Treatment Facility.
   a. By July 1, 2012, Monroe County shall complete construction of Hawk’s Cay WWTP upgrade/expansion, transmission, and collection system;
   b. By July 1, 2013, Monroe County shall complete construction of Duck Key collection system;
   c. By July 1, 2012, Monroe County shall initiate property connections to Hawk’s Cay WWTP;
d. By December 1, 2012, Monroe County shall complete 50% of hook-ups to Hawk’s Cay WWTP;
e. By July 1, 2013, Monroe County shall complete 75% of hook-ups to Hawk’s Cay WWTP; and
f. By July 1, 2014, Monroe County shall complete all remaining connections to Hawk’s Cay WWTP.
3. South Lower Keys Wastewater Treatment Facility (Big Coppitt Regional System).
a. By July 1, 2012, Monroe County shall complete 75% hookups to South Lower Keys WWTP; and
b. By July 1, 2013, Monroe County shall complete all remaining connections to the South Lower Keys WWTP.
4. Cudjoe Regional Wastewater Treatment Facility,
a. By July 1, 2011, Monroe County shall complete planning and design documents for the Cudjoe Regional Wastewater Treatment Facility, the Central Area (Cudjoe, Summerland, Upper Sugarioaf) collection system and the Central Area Transmission Main;
b. By October 1, 2012, Monroe County shall initiate construction of Wastewater Treatment Facility, Central Area Collection System and Central Area Transmission Main;
c. By July 1, 2014, Monroe County shall initiate construction of Wastewater Treatment Facility, Central Area Collection System and Central Area Transmission Main;
d. By February 1, 2012, Monroe County shall complete construction of Wastewater Treatment, Outer Area Collection System and Transmission Main;
e. By February 1, 2015, Monroe County shall complete construction of Outer Area collection and transmission main;
f. By July 1, 2014, Monroe County shall initiate property connections – complete 25% of hook-ups to Cudjoe Regional WWTP;
g. By July 1, 2015, Monroe County shall complete 50% of hook-ups to Cudjoe Regional WWTP; and
h. By December 1, 2015, Monroe County shall complete remaining hook-ups to Cudjoe Regional WWTP.
(d) Stormwater Treatment Facilities.
1. By July 1, 2011, Monroe County shall evaluate and allocate funding for stormwater implementation. Monroe County shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.
2. By July 1, 2011, Monroe County shall apply for stormwater grants from the South Florida Water Management District.
3. By July 1, 2011, Monroe County shall complete Card Sound Road stormwater improvements.

Rulemaking Authority 380.052(9), 380.05(22) FS. Law Implemented 380.0552 FS. History—New 6-17-11.
AGENDA ITEM WORDING: Discussion and direction on the requirement of Administration Commission Rule to adopt the Tier Overlay Zoning Maps into the Comprehensive Plan.

ITEM BACKGROUND: Administration Commission Rule 28-20.140, F.A.C., which was ratified by the Legislature in 2011, includes six Work Program Tasks [28-20.140(5)(a)1, 2, 3, 4, 5, and 6] requiring the County to adjust Tier boundaries Tier Zoning Overlay maps [(5)(a)2)] and amend its Comprehensive Plan to adopt the Tier System Maps onto the Future Land Use Map Series [(5)(a)1, 3 and 4].

Monroe County has completed Work Program task (5)(a)2 with the adoption of four (4) ordinances [Ordinance 005-2011, 006-2011, 007-2011, and 008-2011] on May 4, 2011, revising or assigning the tier overlay designation for 3,394 parcels based upon recommendations from the Tier Designation Review Committee Work Group, Monroe County staff, the Planning Commission, Board of County Commissioners and the public. The Administration Commission and the Department of Economic Opportunity (DEO) have also reported that the County has completed Work Program task (5)(a)2, which is to amend the Tier Overlay Maps to more accurately reflect the criteria for that Tier as amended by Final Order DCA07-GM166.

Additionally, the plaintiff in DOAH Case No. 06-2449GM requested additional revisions to the tier designations – for 393 parcels that were not included in the challenge. Further, the County identified 77 offshore island parcels for review because these parcels were not given a tier designation at the time of the adoption of the original Tier Ordinances in 2006. Collectively, the County refers to these additional Tier designation revisions as the ‘Volume A amendments.’

The Volume A amendments [Ordinances 014-2013 and 015-2013] were adopted by the Board of County Commissioners on March 20, 2013. These amendments are currently under review by DEO; with an anticipated final order publish date of June 21, 2013. Assuming the June 21st publish date and no challenges, the Volume A amendments will be effective by July 12th. The County has been awaiting the completion of the DEO review, the expiration of the appeal period, and for the Volume A Tier designation amendments to become effective – to initiate the discussion of the County adopting the Tier Maps into the Comprehensive Plan (which is required by Work Program Tasks (5)(a)1, 3 and 4).

Throughout the process of updating information and adopting the six (6) ordinances, the County has been concerned with the possibility of new administrative proceedings pursuant to Section 120.569 and 120.57, F.S., which could delay the effectiveness of the ordinances and create significant cost and demands to the County.

Completing Work Program Tasks (5)(a)1, 3 and 4 (adoption of the entire set of Tier Overlay maps into the Comprehensive Plan) could expose the County and every parcel (~44,000) with a Tier designation to a potential challenge.

Monroe County Legal and Growth Management staff met with staff of the Department of Economic Opportunity on June 17, 2013, to discuss this issue.
**PREVIOUS RELEVANT BOCC ACTION:**
The Monroe County Board of County Commissioners adopted Tier Ordinances Nos. 008-2006, 009-2006, 010-2006, 011-2006 and 013-2006, which set forth criteria in the Land Development Regulations implementing a Tier System and adopting Tier Overlay District Maps in order to protect the natural habitat and guide development toward less environmentally sensitive areas.

On May 4, 2011, the Monroe County Board of County Commissioners adopted Ordinances Nos. 005-2011, 006-2011, 007-2011 and 008-201, revising or assigning the tier overlay designation for 3,394 parcels.

On March 20, 2013, the Monroe County Board of County Commissioners adopted Ordinances Nos. 014-2013 and 015-2013 (Volume A amendments).

**CONTRACT/AGREEMENT CHANGES:** n/a

**STAFF RECOMMENDATIONS:** Discussion of the pros and cons of completing Work Program Tasks (5)(a)1, 3, 4, 5, and 6.

| TOTAL COST: | n/a | INDIRECT COST: | | BUDGETED: | Yes | No |
| --- | --- | --- | --- | --- | --- |
| DIFFERENTIAL OF LOCAL PREFERENCE: | | | | | |
| COST TO COUNTY: | | | SOURCE OF FUNDS: | | |
| REVENUE PRODUCING: | Yes | No | x | AMOUNT PER MONTH | Year | |
| APPROVED BY: | County Atty | OMB/Purchasing | Risk Management | |
| DOCUMENTATION: | Included | x | Not Required | |
| DISPOSITION: | | | AGENDA ITEM # | |
Rule 28-20.140, F.A.C.

(5) WORK PROGRAM.

(a) Carrying Capacity Study Implementation.

1. By July 1, 2012, Monroe County shall adopt the conservation planning mapping (the Tier Zoning Overlay Maps and System) into the Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee with the adjusted Tier boundaries.

2. By July 1, 2012, Monroe County shall adjust the Tier I and Tier IIIA (SPA) boundaries to more accurately reflect the criteria for that Tier as amended by Final Order DCA07-GM166 and implement the Florida Keys Carrying Capacity Study, utilizing the updated habitat data, and based upon the recommendations of the Tier Designation Review Committee Work Group.

3. By July 1, 2012, Monroe County shall create Goal 106 to complete the 10 Year Work Program found in Rule 28-20.110, F.A.C., and to establish objectives to develop a build-out horizon in the Florida Keys and adopt conservation planning mapping into the Comprehensive Plan.

4. By July 1, 2012, Monroe County shall create Objective 106.2 to adopt conservation planning mapping (Tier Maps) into the Monroe Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee Work Group.

5. By July 1, 2012, Monroe County shall adopt Policy 106.2.1 to require the preparation of updated habitat data and establish a regular schedule for continued update to coincide with evaluation and appraisal report timelines.

6. By July 1, 2012, Monroe County shall adopt Policy 106.2.2 to establish the Tier Designation Work Group Review Committee to consist of representatives selected by the Florida Department of Community Affairs from Monroe County, Florida Fish & Wildlife Conservation Commission, United States Fish & Wildlife Service, Department of Environmental Protection and environmental and other relevant interests. This Committee shall be tasked with the responsibility of Tier designation review utilizing the criteria for Tier placement and best available data to recommend amendments to ensure implementation of and adherence to the Florida Keys Carrying Capacity Study. These proposed amendments shall be recommended during 2009 and subsequently coincide with the Evaluation and Appraisal report timelines beginning with the second Evaluation and Appraisal review which follows the adoption of the revised Tier System and Maps as required above adopted in 2011. Each evaluation and appraisal report submitted following the 2011 evaluation and appraisal report shall also include an analysis and recommendations based upon the process described above.
Amendment Process for adopting the Tier Overlay Zoning Maps into the Comprehensive Plan

<table>
<thead>
<tr>
<th>Development Review Committee (DRC)</th>
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<tr>
<td>Planning Commission (PC)</td>
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<td>BOCC transmittal hearing</td>
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</table>

County transmits the amendment package to State Land Planning Agency for review and issuance of an Objections, Recommendations and Comments (ORC) Report. (60 days after amendment package is found complete).

County receives & reviews ORC report – County may need to address issues raised in the ORC report by recommending revisions to proposed amendments, providing additional data and analysis, etc. The County has 180 days to adopt the amendments, adopt the amendments with changes or not adopt the amendment.

BOCC adoption hearing

An “affected person” may file a petition with the Division of Administrative Hearings (DOAH) within 30 days after the BOCC adopts the amendment.

County transmits the amendment package to State Land Planning Agency for a compliance review and issuance of a Notice Of Intent to find the amendment “in-compliance” or “not-in-compliance” (45 days after package found complete).

NOTE: If an appeal is filed, the CP does not go into effect, while that administrative appeal is pending. An appeal would require a referral to a DOAH hearing officer, who would issue an initial order attempting to schedule a hearing between 30 and 70 days from the date of the initial order but the hearing officer and/or the parties may seek a hearing date beyond the 70th day. Hearings can last more than one day; those days are not necessarily consecutive to each other. The hearing officer has 30 days from the conclusion of the hearing or receipt of the transcript, whichever is later, to enter a recommended order. F.A.C. 28-106.216(1). The parties may file exceptions to the recommended order within 15 days. A party may file responses to the other party’s exceptions within 10 days. The DEO Secretary would then review the recommended order and exceptions before entering a final order.

The final order could be appealed to the 1st or 3rd District Court of Appeal.

Add 6-12 months to timeframe for an Administrative Appeal

Add an additional 6-12 months to timeframe for an Appeal to a District Court of Appeal

If no appeal, the Comprehensive Plan amendment becomes effective.