

Rules & Calendar Committee

Thursday, April 21, 2011
9:45 a.m.
404 House Office Building

MEETING PACKET

Dean Cannon
Speaker

Gary Aubuchon
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rules & Calendar Committee

Start Date and Time: Thursday, April 21, 2011 09:45 am

End Date and Time: Thursday, April 21, 2011 10:45 am

Location: 404 HOB

Duration: 1.00 hrs

Actionable Items

Set Special Order Calendar(s)

Consideration of the following proposed committee bill(s):

PCB RCC 11-09 -- Ratification of rules pertaining to Land Planning Regulations For The Florida Keys Area Of Critical State Concern

NOTICE FINALIZED on 04/19/2011 16:21 by Hunter.Robert

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RCC 11-09 Ratification of rules pertaining to Land Planning Regulations For The Florida Keys Area Of Critical State Concern

SPONSOR(S): Rules & Calendar Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules & Calendar Committee		Miller	Birtman

SUMMARY ANALYSIS

The Administration Commission adopted rules affecting the comprehensive plans for three communities in the Florida Keys Area of Critical State Concern: the City of Marathon, the Village of Islamorada, and Monroe County. The statements of estimated regulatory costs showed each of the following rules would have a specific, adverse economic effect, or would increase regulatory costs, exceeding \$1 million over the first 5 years the rule was in effect:

Rule 28-18.100, Florida Administrative Code (FAC)

Rule 28-18.400, FAC

Rule 28-19.310, FAC

Rule 28-20.400, FAC

Accordingly, these rules must be ratified by the Legislature before they may go into effect.

On February 4, 2011, the Legislature was notified these rules would be submitted for ratification if the rulemaking process was completed before the end of the regular session. Each rule was adopted on April 11, 2011, and submitted for ratification on April 12, 2011.

The proposed bill authorizes the referenced rules to go into effect. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Comprehensive Plans

In response to continued rapid growth and the challenges of the state and local governments to adequately address development impacts, the Legislature adopted Florida's Growth Management Act in 1985, known officially as "The Local Government Comprehensive Planning and Land Development Regulation Act" (the Act).¹ The Act was designed to remedy deficiencies in earlier law by giving more state oversight and control of the planning process to the Department of Community Affairs (DCA), the state's land planning agency. As directed by law, DCA adopted minimum standards for all local plans.² The 1985 Act created the current intergovernmental system of planning. Every county and municipality is required to adopt a local government comprehensive plan in order to guide future growth and development, and the Act authorizes DCA to review comprehensive plans and plan amendments for compliance with the Act. Other state and regional entities also review local government plans and amendments and provide comments to DCA. With state, regional, and local government oversight, Florida has one of the most comprehensive, regulatory, growth management systems in the country.

The Act requires all local governments to adopt comprehensive land use plans and implement those plans through land development regulations and development orders. Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.

Each comprehensive plan contains chapters or "elements" that address future land use (including a future land use map), housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, capital improvements (and a 5-year capital improvement schedule) and public school facilities. Section 163.3177, F.S., and Chapter 9J-5, Florida Administrative Code (FAC), provide the requirements for elements of local comprehensive plans. The statute also provides for scheduled updates to various elements and imposes penalties for failure to adopt or update elements.

Florida Keys Area of Critical State Concern

Areas of critical state concern are designated pursuant to s. 380.05 F.S., which directs the state land planning agency to recommend to the Administration Commission specific areas of critical state concern. In its recommendation, the agency makes recommendations with respect to the purchase of lands situated within the boundaries of the proposed area as environmentally endangered lands and outdoor recreation lands under the Land Conservation Act of 1972. The Florida Keys Area of Critical State Concern is authorized by s. 380.0552, F.S. The designation may be removed upon fulfilling the Work Program Tasks set out in rules of the Administrative Commission.³

The state land planning agency is charged with reviewing all land development regulations for compliance with the adopted principles for guiding development. The state land planning agency can then, after consulting with the appropriate local government, recommend to the Administration Commission the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan.

¹ See ch. 163, pt. II, F.S.

² Rule 9J-5, F.A.C. (Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance).

³ s. 380.0552(4)(a), F.S.

Rulemaking Authority

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.⁴ Rulemaking authority is delegated by the Legislature⁵ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”⁶ a rule. Agencies do not have discretion whether to engage in rulemaking.⁷ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.⁸ The grant of rulemaking authority itself need not be detailed.⁹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹⁰

Under current law, an agency begins the formal rulemaking process by filing a notice of the proposed rule.¹¹ The notice is published by the Department of State in the Florida Administrative Weekly¹² and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. In 2010 the Legislature created s. 120.541(2)(a), F.S., expanding the scope of a SERC to include an economic analysis projecting a proposed rule’s adverse effect on specified aspects of the state’s economy or increase in regulatory costs.

Legislative Ratification

HB 1565 was passed during the 2010 regular session but was vetoed by Governor Crist. On November 16, 2010, the Legislature in special session voted to override that veto and the bill became law as Chapter 2010-279. The law expanded the requirement for agencies to prepare a formal SERC,¹³ broadened the mandatory scope of each SERC to include an economic analysis of a rule’s potential fiscal impacts over 5 years,¹⁴ and created new s. 120.541(3), requiring rules with certain economic impacts must be submitted for ratification by the Legislature before they may go into effect.

The economic analysis now mandated for each SERC by s. 120.541(2)(a), F.S., must address a rule’s potential impact over the 5 years from when the rule goes into effect. First is the rule’s likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.¹⁵ Next is the likely adverse impact on business competitiveness,¹⁶ productivity, or innovation.¹⁷ Finally, whether the rule is likely to increase regulatory costs, including any transactional costs.¹⁸ If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

⁴ s. 120.52(16); *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

⁵ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁶ s. 120.52(17).

⁷ s. 120.54(1)(a), F.S.

⁸ s. 120.52(8) & s. 120.536(1), F.S.

⁹ *Save the Manatee Club, Inc.*, supra at 599.

¹⁰ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹¹ s. 120.54(3)(a)1, F.S.

¹² s. 120.55(1)(b)2, F.S.

¹³ Agencies now must prepare a SERC if the proposed rule will adversely affect small businesses or will directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within the 1 year of the rule going into effect. s. 120.54(3)(b)1.b., 120.541(1)(b), F.S.

¹⁴ s. 120.541(2)(a), F.S.

¹⁵ s. 120.541(2)(a)1., F.S.

¹⁶ Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹⁷ s. 120.541(2)(a) 2., F.S.

¹⁸ s. 120.541(2)(a) 3., F.S.

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”¹⁹ A rule must be filed for adoption before it may go into effect²⁰ and cannot be filed for adoption until completion of the rulemaking process.²¹ A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years²² must be ratified by the Legislature before going into effect.²³ As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Proposed Rules

Comprehensive land management plans for the Florida Keys Area of Critical State Concern may be amended by the local government first adopting the plan and then submitting the amendments for approval by DCA.²⁴ Changes are authorized only once annually and are adopted by the Administration Commission²⁵ through rulemaking after DCA approves the changes by local government.²⁶

On April 11, 2011, the Administration Commission filed several rules for adoption, including the 4 rules referenced above in the initial summary. Statements of estimated regulatory costs submitted with these rules showed each as increasing regulatory costs in excess of \$ 1 million over the next 5 years.

Rules 28-18.100 and 28-18.400, F.A.C., Affecting the City of Marathon

Rule 28-18.100, FAC, notes the comprehensive plan is superseded by the amendments to Rule 28-18.400, the actual comprehensive plan. The proposed changes primarily address continuations and updates to the wastewater treatment and stormwater management components of the plan. These changes bear directly on the availability of permits for construction in Marathon. According to the SERC provided, the estimated assessments and permit fees to move 10,087 private entities, including small businesses, from current on-site treatment plants to a central treatment system, would exceed a total of \$57,798,510. For some 3,855 owners of onsite sewage treatment and disposal facilities, there would be an additional total cost of \$11,565,000 for connecting a residential unit to a central collection line. No lower cost regulatory alternative was received by the agency.

Rule 28-19.310, F.A.C., Affecting Islamorada, Village of Islands

Rule 28-19.310, FAC, is the comprehensive plan for Islamorada, Village of Islands. The proposed changes primarily address continuations and updates to the wastewater treatment and stormwater management components of the plan. These changes bear directly on the availability of permits for construction in Islamorada. According to the SERC provided, the estimated assessments and permit fees to move 3,100 private entities, including small businesses, from current on-site treatment plants to a central treatment system, would exceed a total of \$17,670,000. For these owners of onsite sewage treatment and disposal facilities, there would be an additional total cost of \$9,300,000 for connecting a residential unit to a central collection line. No lower cost regulatory alternative was received by the agency.

Rule 28-20.140, F.A.C., Affecting Monroe County

Rule 28-20.140, FAC, is the comprehensive plan for Monroe County. The proposed changes primarily address continuations and updates to the wastewater treatment and stormwater management components of the plan. These changes bear directly on the availability of permits for construction in Monroe County. According to the SERC provided, the estimated assessments and permit fees to move

¹⁹ s. 120.54(3)(e)6. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

²⁰ s. 120.54(3)(e)6, F.S.

²¹ s. 120.54(3)(e), F.S.

²² s. 120.541(2)(a), F.S.

²³ s. 120.541(3), F.S.

²⁴ s. 380.0552(9)(a), F.S.

²⁵ Comprised of the Governor and Cabinet. s. 380.031(1), F.S.

²⁶ s. 380.0552(9)(b), F.S.

19,145 private entities, including small businesses, from current on-site treatment plants to a central treatment system, would exceed a total of \$109,126,500. Additionally, 3,855 property owners are subject to a Lower Keys Assessment which would total \$96,375,000. 15,438 owners of onsite sewage treatment and disposal facilities would face an additional total cost of \$46,314,000 for connecting a residential unit to a central collection line. No lower cost regulatory alternative was received by the agency.

EFFECT OF PROPOSED CHANGES

The bill removes the condition for the cited rules to become effective created in s. 120.541(3), F.S. The purpose of the bill is limited to authorizing the rules to go into effect and does not adopt, amend, or approve the substance of any rule. The bill expressly denies that it is intended to cure any procedural defect that may exist in the rule. Thus, the bill leaves the rule in the same condition it would be had it been filed for adoption and no ratification condition hindered its execution.

B. SECTION DIRECTORY:

Section 1: Identifies each submitted rule and provides for the rules to go into effect pursuant to s. 120.541(3), F.S. Expressly limits ratification to the effectiveness of the rules. Directs the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

Section 2: Provides the act goes into effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill creates no additional source of state revenues.

2. Expenditures:

The bill requires no state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill itself has no impact on local government revenues.

2. Expenditures:

The bill does not impose additional expenditures on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not have an economic impact on the private sector.

D. FISCAL COMMENTS:

The economic impacts projected in the statements of estimated regulatory costs would result from the operation of the new rules. Some of these economic impacts, including assessments on private individuals or businesses, would appear to result in increased revenues for local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The following information was provided by the Department of Community Affairs in its Statement of Estimated Regulatory Cost analyzing each rule referenced in the bill:

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

This is an ongoing program with existing staff involved in the growth management implementation at the local and state level, no new costs are anticipated.

Based upon this analysis, the legislation does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

No other constitutional issues are presented by the bill.

B. RULE-MAKING AUTHORITY:

The bill meets the final statutory requirement for the Administration Commission to exercise its rulemaking authority concerning these 3 comprehensive plans. No additional rulemaking authority is required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to ratification of rules pertaining to
 3 Land Planning Regulations for the Florida Keys Area of
 4 Critical State Concern; ratifying specified rules for the
 5 sole and exclusive purpose of satisfying any condition on
 6 effectiveness pursuant to s. 120.541(3), F.S., which
 7 requires ratification of any rule meeting any of specified
 8 thresholds for likely adverse impact or increase in
 9 regulatory costs; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. (1) The following rules are ratified for the
 14 sole and exclusive purpose of satisfying any condition on
 15 effectiveness imposed under s. 120.541(3), Florida Statutes:

16 (a) Rules 28-18.100 and 28-18.400, Florida Administrative
 17 Code, relating to the comprehensive plan for the City of
 18 Marathon.

19 (b) Rule 28-19.310, Florida Administrative Code, relating
 20 to the comprehensive plan for the Village of Islamorada.

21 (c) Rule 28-20.140, Florida Administrative Code, relating
 22 to the comprehensive plan for Monroe County.

23 (2) This act serves no other purpose and shall not be
 24 codified in the Florida Statutes. After this act becomes law,
 25 its enactment and effective dates shall be noted in the Florida
 26 Administrative Code or the Florida Administrative Weekly or
 27 both, as appropriate. This act does not alter rulemaking
 28 authority delegated by prior law, does not constitute

29 legislative preemption of or exception to any provision of law
30 governing adoption or enforcement of the rules cited, and is
31 intended to preserve the status of any cited rule as a rule
32 under chapter 120, Florida Statutes. This act does not cure any
33 rulemaking defect or preempt any challenge based on a lack of
34 authority or a violation of the legal requirements governing the
35 adoption of any rule cited.

36 Section 2. This act shall take effect upon becoming a law.



RICK SCOTT
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

April 12, 2011

The Honorable Dean Cannon
Speaker of the House
402 S. Monroe Street
Room 420, The Capitol
Tallahassee, Florida 32399-1300

The Honorable Mike Haridopolos
President of the Senate
404 S. Monroe Street
Room 409, The Capitol
Tallahassee, Florida 32399-1100

Dear Speaker Cannon and President Haridopolos:

As Secretary of the Administration Commission, I am submitting the following rules for legislative ratification pursuant to Section 120.541(3), Florida Statutes:

- Rules 28-18.100 and 28-18.400, FAC, addressing the comprehensive plan for the City of Marathon;
- Rule 28-19.310, FAC, addressing the comprehensive plan for the Village of Islamorada; and
- Rule 28-20.140, FAC, addressing the comprehensive plan for Monroe County.

Each rule relates to a local government located within the Florida Keys Area of Critical State Concern.

Section 380.0552, Florida Statutes, sets forth the Legislative intent for the protection and designation of the Florida Keys as an area of critical state concern. The statute was originally adopted in 1979 and was amended several times thereafter. Pursuant to section 380.0552, Florida Statutes, the Administration Commission is required to annually review the progress of local governments in completing certain tasks that will lead to the eventual removal of the area of critical state concern designation. During the 2010 Legislative Session, changes were adopted in Sections 380.0552(4), 403.086(10), and 381.0065(4), Florida Statutes, providing a new process for the removal of the designation and the extension of statutory deadlines to meet advanced wastewater treatment standards to reduce nutrient loading in the nearshore waters in the Florida Keys Area of Critical State Concern. The 2010 statutory changes also specifically provide the Administration Commission with authority to adopt rules to administer these sections. The above referenced rules were adopted in compliance with statutory direction and provide guidance to local governments to meet legislative intent.

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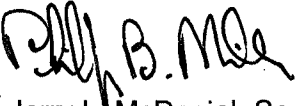
The Honorable Dean Cannon
The Honorable Mike Haridopolos
April 12, 2011
Page Two

All statutory requirements for rule adoption have been met and the attached certified rule packages were submitted to the Department of State for final adoption on April 11, 2011. Both the Joint Administrative Procedures Committee and the Florida Small Business Regulatory Advisory Council have reviewed the rules and have no objections to rule adoption and ratification.

The Administration Commission requests the above referenced rules be ratified by the Florida Legislature during the 2011 Legislative Session.

If you have questions, please contact Phillip Miller, Director of the Administration Commission, at (850) 487-1884.

Sincerely,


FW Jerry L. McDaniel, Secretary
Administration Commission

JLM/bl

Enclosures

cc: The Honorable Ron Saunders, Representative, District 120
The Honorable Larcenia Bullard, Senator, District 39
Don Rubottom, Staff Director, House Rulemaking and Regulation Subcommittee
Dawn Roberts, Staff Director, Senate Committee on Governmental Oversight and
Accountability



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

April 11, 2011

FILED
2011 APR 11 PM 2:21
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

VIA HAND DELIVERY

Ms. Liz Cloud, Chief
Bureau of Administrative Code
and Weekly
R.A. Gray Building, Room 101
500 South Bronough Street
Tallahassee, Florida 32399-0250

Re: Administration Commission Rules 28-18.100 and 28-18.400, Fla. Admin. Code
Filing for Adoption

Dear Ms. Cloud:

Enclosed is the certification package for filing these rules for adoption.

If you have any questions regarding this rule, please contact me. My address is listed below and my e-mail address is Paula.ford@dca.state.fl.us. My direct telephone number is 922-1682.

Thank you.

Sincerely yours,

Paula P. Ford
Agency Clerk

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Enclosure(s)

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100

850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

CERTIFICATION OF ADMINISTRATION COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

- (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and
 - (a) Are filed not more than 90 days after the notice; or
 - (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
 - (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
 - (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
 - (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
 - (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
 - (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
 - (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
 - (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative offered by the Small Business Regulatory Advisory Committee.

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

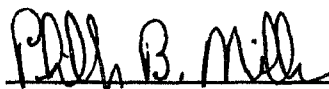
Rule No(s).

28-18.100

28-18.400

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



Signature, Person Authorized to Certify Rules

Secretary, Administration Commission
Title

7
Number of Pages Certified

FILED
2011 APR 11 PM 2:22
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ADMINISTRATION COMMISSION

Rule No.: RULE TITLE

28-18.100: Purpose and Effect

28-18.400: Comprehensive Plan

THE FULL TEXT OF THE PROPOSED RULE IS:

28-18.100 Purpose and Effect.

As provided in Sections 380.05(10) and 380.0552(7), F.S., the Comprehensive Plan of the City of Marathon shall be superseded by amendments which are proposed by Marathon and approved by the Department of Community Affairs pursuant to Sections 380.05(6) and 380.0552(9), F.S.

Rulemaking Authority 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History--New _____.

28-18.400 Comprehensive Plan.

(1) The Comprehensive Plan of the City of Marathon, as the same exists on January 1, 2011, is hereby amended to read as follows:

(2) Policy 1-3.5.18 Marathon Work Program Conditions and Objectives.

(a) The number of allocations issued annually for residential development under the Residential Building Permit Allocation System (BPAS) shall not exceed a total annual unit cap of 30, plus any available unused BPAS allocations from a previous year. Unused BPAS allocations may be retained and made available only for affordable housing and Administrative Relief from BPAS year to BPAS year. Unused market rate allocations shall be available for Administrative Relief. Any unused affordable allocations will roll over to affordable housing. This BPAS allocation represents the total number of allocations for development that may be issued during a year. A BPAS year means the twelve-month period beginning on July 13. Policy 1-3.5.18 supersedes Policy 1-3.5.2 of the City of Marathon Comprehensive Plan.

(b) 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.

(c) Through the Permit Allocation Systems, Marathon shall direct new growth and redevelopment to areas served by a central sewer system by 2015 that has committed or planned funding sources. 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, Marathon 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 Sections 381.0065(4)(1) and 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, Marathon 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 toward accomplishing the tasks of the work program. 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 year.

(b) If the Commission determines that progress has been made for the work program year, then the Commission shall restore the unit cap for residential development for the following year up to a maximum of 30 allocations per BPAS 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 Marathon is governed by the requirements of Sections 381.0065(4)(1) and 403.086(10), F.S., as amended. Nothing in this rule shall be construed to limit the authority of the Department of Environmental Protection or Department of Health to enforce Section 381.0065(4)(1) and 403.086(10), F.S., as amended.

(4) Policy 1-2.2.4 Hurricane Modeling.

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

(4) WORK PROGRAM.

(a) Carrying Capacity Study Implementation.

1. By July 1, 2011, Marathon shall adopt a Comprehensive Plan Policy 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 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 city, county, state or federal agency. Marathon 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.

2. By July 1, 2011, Marathon 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 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 city, county, state or federal agency.

3. By July 1, 2011, Marathon shall amend the Comprehensive Plan to limit allocations into high quality tropical hardwood hammock.

4. By July 1, 2011, Marathon shall amend the Land Development Regulations to limit allocations into high quality tropical hardwood hammock.

5. By July 1, 2011, Marathon shall adopt a Comprehensive Plan Policy discouraging private applications for future land use map amendments which increase allowable density/intensity on lands in the Florida Keys.

6. By July 1, 2011 and each July thereafter, Marathon 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.

7. By July 1, 2012, Marathon shall enter into a memorandum of understanding with the Department of Community Affairs, Division of Emergency Management, Monroe County, 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 of Community Affairs to accurately depict evacuation clearance times for the population of the Florida Keys.

8. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding. Marathon 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 Business and Economic Research, and other studies). The City shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.

9. By December 1, 2012, Marathon shall 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, Monroe County and each municipality in the Keys.

10. By December 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 hurricane evacuation clearance time. If necessary, the Department of Community Affairs shall work with each local government to amend the respective Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.

11. By July 1, 2013, based on the Department of Community Affairs' recommendations, Marathon shall amend the current building permit allocation system (BPAS in the Comprehensive Plan and Land Development Regulations) based on infrastructure availability, level of service standards, environmental carrying capacity, and hurricane evacuation clearance time.

(b) Wastewater Implementation.

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

2. December 1, 2013, Marathon shall work with the owners of wastewater facilities and onsite systems throughout the City and the Department of Environmental Protection (DEP) and the Department of Health (DOH) to

fulfill the requirements of Sections 381.0065(3)(h) and (4)(l) and 403.086(10), 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 2015 treatment and disposal requirements.

3. By July 1, 2011, Marathon 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.

4. By July 1, 2011, Marathon shall continue to develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement facilities.

5. By July 1, 2011 and each year through 2013, Marathon shall annually draft a resolution requesting the issuance of a portion 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.

6. By July 1, 2011, Marathon shall develop a mechanism to provide accurate and timely information and establish Marathon'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.

7. By December 1, 2012, Marathon 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 and the Department of Community Affairs. This report shall describe the status of Marathon's enforcement action and provide the circumstances of why enforcement may or may not have been initiated.

(c) Wastewater Project Implementation.

1. Sub area 1: Knight's Key.

a. By July 1, 2011, Marathon shall secure plant site;

b. By December 1, 2011, Marathon shall construct Knight's Key Wastewater Plant;

c. By May 1, 2012, Marathon shall initiate connections; and

d. By July 1, 2012, Marathon shall complete connections (100%).

2. Sub area 2: Boot Key (non-service area).

By July 1, 2011, Marathon shall ensure completion of upgrade.

3. Sub area 3: 11 Street – 39 Street (Vaca Key West).

- a. By July 1, 2011, Marathon shall complete construction of plant;
- b. By July 1, 2011, Marathon shall complete construction of collection system;
- c. By July 1, 2011, Marathon shall initiate connections; and
- d. By July 1, 2012, Marathon shall complete connections (100%).

4. Sub area 4: Gulfside 39 Street (Vaca Key Central).

By July 1, 2013, Marathon shall complete connections (100%).

5. Sub area 5: Little Venice (60 Street – Vaca Cut East).

- a. By July 1, 2012, Marathon shall complete construction of collection system;
- b. By July 1, 2012, Marathon shall initiate connections for Phase II;
- c. By July 1, 2013, Marathon shall complete connections (100%) for Phase II.

6. Sub area 6-Vaca Cut-Coco Plum (Fat Key Deer West).

By July 1, 2011, Marathon shall complete connections (100%).

7. Sub area 7: Tom Harbor Bridge-Grassy Key.

- a. By July 1, 2012, Marathon shall complete construction of plant;
- b. By July 1, 2012, Marathon shall bid and award design of collection system;
- c. By July 1, 2012, Marathon shall construction of collection system;
- d. By July 1, 2012, Marathon shall initiate connections; and
- e. By July 1, 2013, Marathon shall complete connections (100%).

(d) Stormwater Treatment Facilities.

1. Beginning July 1, 2011 and each July 1 thereafter Marathon shall annually evaluate and allocate funding for stormwater implementation. Marathon shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. Beginning July 1, 2011 and each July 1 thereafter, Marathon shall annually apply for stormwater grants from the South Florida Water Management District.

3. Sub area 3: 11 Street – 37 Street (Vaca Key West): By July 1, 2011, complete Stormwater Treatment Facilities simultaneously with wastewater projects, including the direct outfall retrofits for 27th Street and 24th Street.

4. Sub area 5: Little Venice (60 Street – Vaca Cut East): By July 1, 2012, complete Stormwater Treatment Facilities simultaneously with wastewater projects.

5. Sub area 7: Tom Harbor Bridge-Grassy Key: By July 1, 2012, complete Stormwater Treatment Facilities simultaneously with wastewater projects.

6. By July 1, 2012, Marathon shall eliminate direct outfall retrofits for: 27th Street, Sombrero Islands, 24th Street, and 52nd Street.

Rulemaking Authority 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History–New _____.

ADMINISTRATION COMMISSION

Rule Chapter 28-18, Fla. Admin. Code

SUMMARY OF THE RULE

The proposed amendments to Rule 28-18 specify the conditions under which the City of Marathon Comprehensive Plan will be superceded and to amend the Work Program as directed by the Administration Commission. Specifically, the proposed rules for the City of Marathon Comprehensive Plan identify the individual Work Program tasks set forth in Rule 28-20.110 F.A.C., and the completion dates of the Work Program tasks necessary for consideration by the Administration Commission prior to Removal of the Area of Critical State Concern Designation. As required by Section 380.0552(4), Florida Statutes, the Work Program tasks specified in Administration Commission rules must be reported annually. The protection of the natural environment of the Florida Keys, and the identification of and progress in accomplishing the tasks under the Work Program (as set forth in Rule 28-20.110, F.A.C.) is reported to the Department of Community Affairs for the preparation of a written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater Master Plan and the construction of wastewater treatment and collection facilities; the continued implementation of the Florida Keys Carrying Capacity Study; the identification and completion of stormwater projects; and the analysis of hurricane evacuation issues in the Florida Keys.

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ADMINISTRATION COMMISSION

Rule Chapter 28-18, Fla. Admin. Code

STATEMENT OF FACTS AND CIRCUMSTANCES

JUSTIFYING THE RULE

The proposed amendments to Rule 28-18 amend the Work Program as set forth in Rule 28-20.110 F.A.C., and are needed to update the rule to reflect the subsequent incorporation of the City of Marathon and to implement the Section 380.0552(4), Florida Statutes, annual reporting requirement to the Administration Commission describing the progress of the City of Marathon in completing the remaining tasks under the Work Program as set forth in Rule 28-20.110, F.A.C., that are necessary prior to the removal of the Florida Keys Area of Critical State Concern designation.

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TALLAHASSEE, FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Community Planning

Rule 28-18.100, 28-18.300, and 28-18.400 Fla. Admin. Code

SUMMARY OF HEARING

A rule adoption hearing was held at 9:00 a.m. on January 10, 2011 at the Randall Kelley Training Room, Third Floor, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The purpose of the hearing was to receive comments on proposed Rules 28-18.100, 28-18.300, 28-18.400; 28-19.300, 28-19.310; 28-20.130 and 28-20.140 F.A.C. as published in the Florida Administrative Weekly on December 17, 2010. DCA staff attending the hearing included Charles Gauthier, Richard Shine, Rebecca Jetton, and Barbara Powell. Attendees included Roman Gastesi, Christine Hurley, Karen Peterson, Liz Wood, Ed Koconis, James White, Gerald Briggs, Judith Clarke, Susan Grimsly, John Herin, Suzanne Hutton, Kathy Grasser, Bob Shillinger, Mitch Harvey, Nina Boniski

Richard Shine opened the hearing and briefly explained the rulemaking process, the purpose of the hearing, and the requirements regarding the submission and use of comments on the proposed rules. Richard Shine requested comments for Marathon Rules 28-18.100, 28-18.300 and 28-18.400. Not hearing comments, reminded attendees that comments will be received until January 20, 2011. Richard Shine closed the rule adoption hearing after all attendees had an opportunity to provide comments.

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TALLAHASSEE, FLORIDA

Statement of Estimated Regulatory Costs

Department of Community Affairs

Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by Section 120.541, Florida Statutes (F.S.) An agency shall prepare a statement of estimated regulatory costs of the proposed rule, as provided by Section 120.541, F.S. and by House Bill 1565 if the proposed rule will have an impact on small business.

Proposed Administration Commission Rules:

Marathon:

Rule 28-18.100 F.A.C. Purpose and Effect; (New Rule)

Rule 28-18.300 F.A.C. Work Program Administration (New Rule)

Rule 28-18.400 F.A.C. Comprehensive Plan (New Rule)

Summary of Rules:

Marathon: Proposal to adopt a new rule for the City of Marathon Comprehensive Plan to identify the purpose and effect, incorporate the Section 380.0552(4), F.S., requirements for annual reporting to the Administration Commission describing the progress of the City of Marathon in accomplishing the tasks under the Work Program as set forth in proposed Rule 28-18.300, Florida Administrative Code (F.A.C.); wastewater construction schedule as required by Section 403.086(10), F.S.; and to determine whether progress has been achieved for removal of the Florida Keys Area of Critical State Concern designation.

Subject Area to Be Addressed:

The improvement of near shore water quality and the protection of the natural environment of the Florida Keys, and the identification of and progress in accomplishing the tasks under Work Program (as set out in proposed Rule 28-18.300, F.A.C.) to be reported in the Department of Community Affairs written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater and Stormwater Master Plans through the financing and construction of additional wastewater and stormwater treatment facilities; the continued implementation of the Florida Keys Carrying Capacity Study through the analysis of hurricane evacuation issues and development of a Memorandum of Understanding regarding hurricane evacuation clearance time modeling and future build out of the keys. The implementation of the Carrying Capacity Study through continued applications for funding to address land acquisition and strengthening of growth management regulations. These regulations are needed to guide development toward areas served by advanced wastewater treatment facilities and to steer development away from environmentally sensitive land containing Tropical Hardwood Hammocks that provide habitat for State and Federal listed endangered species.

Law Implemented:

Section 380.0552(4), F.S.
Rule 28-20.110, F.A.C.
Section 381.0065(4), F.S.
Section 403.086(10), F.S.

Specific Authority:

Sections 380.0552(9) and 380.05(22), F.S.
Section 380.05(22)(b), F.S.
Sections 120.536(1) and 120.54, F.S.

Statement of Estimated Regulatory Costs (SERC):

A SERC must include all of the information required by Sections 120.541(2)(a)- (g), F.S. The Department's SERC for proposed Rules 28-18.100, 28-18.300, and 28-18.400 F.A.C. is set forth below in order of statutory sub-section. The language of each statutory sub-section is set forth in bold print followed by the Department's response.

120.541(2)(a) An economic analysis showing whether the rule directly or indirectly:

- 1. Is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;***
- 2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;***
or
- 3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.***

The Florida Keys proposed rule will trigger Section 120.541(2)(a)3., F.S.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This rule will affect approximately 92,000 residents and up to 30,000 tourists county-wide.

Within the City of Marathon the proposed rule will directly impact 3,855 owners of On Site Sewage Treatment and Disposal Systems and 70 package plants. The marine ecosystem of the Florida Keys is dependent on clear water with low levels of nutrients. Ongoing research has determined that nutrients from wastewater are one of the major contributors to the decline of the water quality in the Florida Keys. Tourism and the coral reef community are dependent upon clean water. Historically, the Florida Keys has relied upon On Site Sewage Treatment and Disposal systems to and small package plants for

the treatment of residential and commercial human waste. The wastewater treatment and disposal requirements of Chapter 99-395, L.O.F, were enacted by the Legislature of the State of Florida in 1999 and updated by Sections 381.0065(4), and 403.086(10), F.S.

The proposed rule contains a schedule of tasks that will address the protection of the natural environment of the Florida Keys, the requirement to submit an annual report, and the identification of tasks under Work to be reported in the Department of Community Affairs written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater and Stormwater Master Plans through the financing and construction of additional wastewater and stormwater treatment facilities; the continued implementation of the Florida Keys Carrying Capacity Study through the analysis of hurricane evacuation issues and development of a Memorandum of Understanding regarding hurricane evacuation clearance time modeling and future build out of the keys. Additional planning tasks include an annual schedule to apply for funding to address land acquisition needed for environmentally sensitive parcels that have not competed well in the building permit allocation system and are eligible to have an offer for land acquisition or given a permit.

Central Wastewater Construction	unfunded	\$ 25,000,000.
Marathon stormwater construction		\$ 25,000,000.
Administrative relief (land acquisition)		\$ 200,000.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

This is an ongoing program with existing staff involved in the growth management implementation at the local and state level, no new costs are anticipated.

(d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

Assessments:	10,087 OSDTS x \$5,730 =	\$ 57,798,510.
Permits to abandon septic tanks :	3855 OSDTS x \$50.00 =	\$ 192,750.
Residential plumbing cost to connect to collection line:	3855 OSDTS x \$3,000 =	\$ 11,565,000.

(e) An analysis of the impact on small businesses as defined by s.288.703, and an analysis of the impact on small counties and small cities as defined in by s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

A small business may be served by an onsite system or a package plant. The estimated cost to upgrade a package plant without connection to central wastewater is as follows:

Systems treating 10,000 gallons per day (gpd)-50,000 gpd (\$10 per gallon)	\$	250,000.
Systems treating 50,000 gpd - 100,000 gpd (\$5 per gallon)	\$	500,000.
Permits to abandon wastewater injection wells 70 package plants x \$25 =	\$	1,750.

(f) Any additional information that the agency determines may be useful.

The benefits of adopting a rule and implementing the legislation will be improvements to nearshore water quality. The Florida Keys are dependent on tourism for their economic base. Tourism from water-based activities (kayaking, snorkeling, scuba, etc.) contributes up to \$1.2 Billion per year. Recreation/commercial fishing contributes \$557 million per year to the economy with commercial fishing being the second largest industry in the Florida Keys.¹ Because of the recreational and commercial importance of the marine resources of the Florida Keys, protecting these resources is valuable not only for the environment but also for the economy.

In addition to the benefits from an improvement in nearshore water quality, the following benefits can be expected:

- Increased jobs constructing collections systems,
- Increased demand for plumbing contractors
- Increases sales of plumbing supplies in local stores
- Increased value of real estate
- Offsets increased costs to determine Total Maximum Daily Load for stormwater management
- Increased jobs in City administering central sewer
- Decreased maintenance costs to owners of package plants to businesses
- Decreased maintenance costs to residential on-site sewage systems
- Increased revenues to Department of Health

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

N/A

¹ December 2007. Florida Keys National Marine Sanctuary Revised Management Plan.
http://floridakeys.noaa.gov/pdfs/2007_man_plan.pdf



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

April 11, 2011

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

VIA HAND DELIVERY

Ms. Liz Cloud, Chief
Bureau of Administrative Code
and Weekly
R.A. Gray Building, Room 101
500 South Bronough Street
Tallahassee, Florida 32399-0250

Re: Rule 28-19.310, Fla. Admin. Code
Filing for Adoption

Dear Ms. Cloud:

Enclosed is the certification package for filing this rule for adoption.

I would like to mention a technical change which has been approved by Brian Moore (JAPC). In (5)(b)2. "cold spot" has been replaced with "non-service area" because in the rule they have the same meaning.

If you have any questions regarding this rule, please contact me. My address is listed below and my e-mail address is paula.ford@dca.state.fl.us. My direct telephone number is 922-1682.

Thank you.

Sincerely yours,

Paula P. Ford
Agency Clerk

ppf/

Enclosure(s)

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

CERTIFICATION OF ADMINISTRATION COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

- (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and
 - (a) Are filed not more than 90 days after the notice; or
 - (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
 - (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
 - (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
 - (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
 - (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
 - (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
 - (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objective of the law being implemented; or
 - (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

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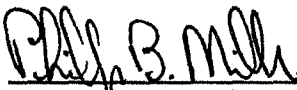
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

28-19.310

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



Signature Person Authorized to Certify Rules

Title _____
Secretary, Administration Commission

5 _____
Number of Pages Certified

ADMINISTRATION COMMISSION

Rule No.: RULE TITLE

28-19.310: Comprehensive Plan

THE FULL TEXT OF THE PROPOSED RULE IS:

28-19.310 Comprehensive Plan.

(1) The Comprehensive Plan of Islamorada, Village of Islands, as the same exists on January 1, 2011, is hereby amended to read as follows:

(2) Policy 1-3.1.1 Islamorada Work Program Conditions and Objectives.

(a) The number of permits issued annually for residential development under the Residential Building Permit Allocation System (BPAS) shall not exceed a total annual unit cap of 22 market rate units and 6 affordable housing units, plus any available unused BPAS allocations from the previous BPAS year. Unused BPAS allocations may be retained and made available only for affordable housing and Administrative Relief from BPAS year to BPAS year. Unused market rate allocations shall be available for Administrative Relief. Any unused affordable allocations will roll over to affordable housing. This BPAS allocation represents the total number of allocations for development that may be issued during a year. A BPAS year means the twelve-month period beginning on July 13.

(b) Beginning November 30, 2011, the Village 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 toward accomplishing the tasks of the work program. 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 year.

(3) Policy 2-1. 2.10 Hurricane Modeling.

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

(4) Reporting and Oversight.

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(a) Through the Permit Allocation Systems, Islamorada shall direct new growth and redevelopment to areas served by or that would be served a central sewer system by December 2015, that has committed funding or planned funding sources. 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, the Village of Islamorada shall coordinate with the central wastewater facility provider and shall increase an applicant's score by two 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 381.0065(4)(1) and 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.

(b) If the Commission determines that progress has been made for the work program year, then the Commission shall restore the unit cap for residential development for the following year up to a maximum of 28 allocations per BPAS year.

(c) Wastewater treatment and disposal in Islamorada is governed by the requirements of Section 381.0065(4)(1) and Section 403.086(10), F.S. Nothing in this rule shall be construed to limit the authority of the Department of Environmental Protection or Department of Health to enforce Section 381.0065(4)(1) and Section 403.086(10), F.S.

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

(5) WORK PROGRAM.

(a) Carrying Capacity Implementation.

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

2. By July 1, 2012, Islamorada shall enter into a memorandum of understanding with the Department of Community Affairs, Division of Emergency Management, Marathon, Monroe, Key West, Key Colony Beach, and Layton after a notice, public workshop 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.

3. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding. Islamorada 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 Business and Economic Research, and other studies). Islamorada shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.

4. By July 1, 2012, Islamorada shall 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, Monroe County and each municipality in the Keys.

5. 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, 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.

6. By July 1, 2013, based on the Department of Community Affairs' recommendations, Islamorada shall amend the current building permit allocation system (BPAS in the Comprehensive Plan and Land Development Regulations) based on infrastructure availability, level of service standards, environmental carrying capacity constraints, and hurricane evacuation clearance time.

(b) Wastewater Implementation.

1. Beginning July 1, 2011 and each July 1 thereafter, Islamorada shall identify any funding for wastewater implementation. Islamorada shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. By December 1, 2013, Islamorada shall provide a final determination of non-service areas requiring upgrade to meet Sections 381.0065(4)(l) and 403.086(10), F.S., wastewater treatment and disposal standards. This shall be in the form of a resolution including a map of the non-service areas.

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

4. By July 1, 2011 and by July 1 of each year thereafter, Islamorada 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.

5. By September 1, 2011, Islamorada shall develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities.

6. By July 1, 2011 and each July 1 thereafter through 2013, Islamorada shall annually draft a resolution requesting the issuance of a portion 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.

7. By July 1, 2011 and each July 1 thereafter through 2013, Islamorada shall develop a mechanism to provide accurate and timely information and establish Islamorada's annual funding allocations necessary to provide 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.

8. By December 1, 2013, Islamorada 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 Islamorada's enforcement action and provide the circumstances of why enforcement may or may not have been initiated.

(c) Wastewater Project Implementation.

1. By June 1, 2011, Islamorada shall provide a wastewater financing plan to the Department of Community Affairs and Administration Commission.
2. By July 1, 2011, Islamorada shall conclude negotiations with Key Largo Wastewater Treatment District for treatment capacity.
3. By July 1, 2011, Islamorada shall advertise for proposal for design build operate finance construction of Village-wide wastewater system.
4. By July 1, 2011 submit a copy of contract agreement with Key Largo Wastewater District documenting acceptance of effluent or alternative plan with construction of wastewater treatment plants in Village that ensures completion and connection of customers by December 2015.
5. By July 1, 2011, Islamorada shall make available to its customers an additional 700 connections (Phase II) to the North Plantation Key Wastewater Treatment Plant (WWTP).
6. By September 1, 2011, Islamorada shall select the design build operate finance contractor for the Village-wide wastewater system.
7. By October 1, 2011, Islamorada shall submit a wastewater construction status report to the Department of Community Affairs and the Administration Commission which includes substantial completion of construction prior to January 1, 2015 and final completion prior to July 1, 2015.
8. By September 1, 2013, Islamorada shall complete final design of the Village-wide wastewater system.
9. By December 1, 2013, Islamorada shall commence construction of the Village-wide wastewater system.
10. By June 1, 2014, Islamorada shall make available to its customers 25% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.
11. By December 1, 2014, Islamorada shall make available to its customers 50% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.
12. By June 1, 2015, Islamorada shall make available to its customers 75% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.
13. By December 1, 2015, Islamorada shall make available to its customers 100% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.

Rulemaking Authority 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History–New

ADMINISTRATION COMMISSION

Rule Chapter 28-19, Fla. Admin. Code

SUMMARY OF THE RULE

The proposed amendments to Rule 28-19 specify the conditions under which the Village of Islamorada Comprehensive Plan will be superceded and to amend the Work Program as directed by the Administration Commission. Specifically, the proposed rules for the Village of Islamorada Comprehensive Plan identify the individual Work Program tasks set forth in Rule 28-20.110 F.A.C., and the completion dates of the Work Program tasks necessary for consideration by the Administration Commission prior to Removal of the Area of Critical State Concern Designation. As required by Section 380.0552(4), Florida Statutes, the Work Program tasks specified in Administration Commission rules must be reported annually. The protection of the natural environment of the Florida Keys, and the identification of and progress in accomplishing the tasks under the Work Program (as set forth in Rule 28-20.110, F.A.C.) is reported to the Department of Community Affairs for the preparation of a written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater Master Plan and the construction of wastewater treatment and collection facilities; the continued implementation of the Florida Keys Carrying Capacity Study; the identification and completion of stormwater projects; and the analysis of hurricane evacuation issues in the Florida Keys.

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2011 APR 11 PM 2:23
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ADMINISTRATION COMMISSION

Rule Chapter 28-19, Fla. Admin. Code

STATEMENT OF FACTS AND CIRCUMSTANCES

JUSTIFYING THE RULE

The proposed amendments to Rule 28-19 amend the Work Program as set forth in Rule 28-20.110 F.A.C., and are needed to update the rule to reflect the subsequent incorporation of the Village of Islamorada and to implement the Section 380.0552(4), Florida Statutes, annual reporting requirement to the Administration Commission describing the progress of the Village of Islamorada in completing the remaining tasks under the Work Program as set forth in Rule 28-20.110, F.A.C., that are necessary prior to the removal of the Florida Keys Area of Critical State Concern designation.

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Community Planning

Rules 28-19.300, and 28-19.310 Fla. Admin. Code

SUMMARY OF HEARING

A rule adoption hearing was held at 9:00 a.m. on January 10, 2011 at the Randall Kelley Training Room, Third Floor, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The purpose of the hearing was to receive comments on proposed Rules 28-18.100, 28-18.300, 28-18.400; 28-19.300, 28-19.310; 28-20.130 and 28-20.140 F.A.C. as published in the Florida Administrative Weekly on December 17, 2010. DCA staff attending the hearing included Charles Gauthier, Richard Shine, Rebecca Jetton, and Barbara Powell. Attendees included Roman Gastesi, Christine Hurley, Karen Peterson, Liz Wood, Ed Koconis, James White, Gerald Briggs, Judith Clarke, Susan Grimsly, John Herin, Suzanne Hutton, Kathy Grasser, Bob Shillinger, Mitch Harvey, Nina Boniski

Richard Shine opened the hearing and briefly explained the rulemaking process, the purpose of the hearing, and the requirements regarding the submission and use of comments on the proposed rules. Richard Shine requested comments for 28-19.300, and 28-19.310. Comments were received from Ed Koconis and Nina Boniski. The Village requested a portion of the rule that referred to an agreement in which the Village is not a party be deleted. The Village provided comments regarding the issue of enforcement for the upgrading of septic tanks. The Village maintained that the Department of Health has the statutory authority and responsibility to conduct enforcement activities. The Village provided a new implementation plan for providing centralized sewer to its residents which included new dates for completion. The Village requested the term "at least" be removed from the rule. Further discussions took place regarding duplication of statutory language within the rules and at what point in the construction of sewer facilities points would be awarded in the building permit allocation systems. The Village requested that the dates relative to hurricane evacuation be moved forward one year. Richard Shine closed the adoption hearing after all attendees had an opportunity to provide comments.

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2011 APR 11 PM 2:24
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Statement of Estimated Regulatory Costs

Department of Community Affairs

Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by Section 120.541, Florida Statutes (F.S.) However, an agency shall prepare a statement of estimated regulatory costs of the proposed rule, as provided by Section 120.541, F.S. and by House Bill 1565 if the proposed rule will have an impact on small business.

Proposed Administration Commission Rules:

Islamorada, Village of Islands:

Rule 28-19.300 F.A.C. Work Program Administration (New Rule Section)

Rule 28-19.310 F.A.C. Comprehensive Plan (New Rule Section)

Summary of Rules:

Islamorada: Proposal to adopt a new rule for the Islamorada, Village of Islands Comprehensive Plan to incorporate the Section 380.0552(4), F.S., requirements for annual reporting to the Administration Commission describing the progress of the Village of Islamorada in accomplishing the remaining tasks under the Work Program as set forth in Rule 28-19.310, Florida Administrative Code(F.A.C.); to adopt a wastewater construction schedule as required by Section 403.086(10), F.S.; and to determine whether progress has been achieved for removal of the Florida Keys Area of Critical State Concern designation.

Subject Area to Be Addressed:

The improvement of near shore water quality and the protection of the natural environment of the Florida Keys, and the identification of and progress in accomplishing the tasks under Work Program (as set out in proposed Rule 28-19.310, F.A.C.) to be reported in the Department of Community Affairs written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater and Stormwater Master Plans through the financing and construction of additional wastewater and stormwater treatment facilities; the continued implementation of the Florida Keys Carrying Capacity Study through the analysis of hurricane evacuation issues and development of a Memorandum of Understanding regarding hurricane evacuation clearance time modeling and future build out of the keys. The implementation of the Carrying Capacity Study through continued applications for funding to address land acquisition and strengthening of growth management regulations. These regulations are needed to guide development toward areas served by advanced wastewater treatment facilities and to steer development away from environmentally sensitive land containing Tropical Hardwood Hammocks that provide habitat for State and Federal listed endangered species.

Law Implemented:

Section 380.0552(4), F.S.
Rule 28-20.110, F.A.C.
Section 381.0065(4), F.S.
Section 403.086(10), F.S.

Specific Authority:

Sections 380.0552(9) and 380.05(22), F.S.
Section 380.05(22)(b), F.S.
Sections 120.536(1) and 120.54, F.S.

Statement of Estimated Regulatory Costs (SERC):

A SERC must include all of the information required by Sections 120.541(2)(a)-(g), F.S. The Department's SERC for proposed Rules 28-19.300 and 28-19.310 F.A.C., is set forth below in order of statutory sub-section. The language of each statutory sub-section is set forth in bold print followed by the Department's response.

120.541(2)(a) An economic analysis showing whether the rule directly or indirectly:

- 1. Is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;***
- 2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or***
- 3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.***

The Florida Keys proposed rule will trigger s. 120.541(2)(a)3, F.S.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This rule will affect approximately 92,000 residents and up to 30,000 tourists county-wide.

Within the Village of Islamorada the proposed rule will directly impact 3,707 owners of On Site Sewage Treatment and Disposal Systems and 64 package plants. The marine ecosystem of the Florida Keys is dependent on clear water with low levels of nutrients. Ongoing research has determined that nutrients from wastewater are one of the major contributors to the decline of the water quality in the Florida Keys. Tourism, commercial fishing and the coral reef community are dependent upon clean water. Historically, the Florida Keys has relied upon On Site Sewage Treatment and Disposal Systems and small

package plants for the treatment of residential and commercial human waste. The wastewater treatment and disposal requirements of Chapter 99-395, L.O.F, were enacted by the Legislature of the State of Florida in 1999 and updated by Sections 381.0065(4) and 403.086(10), F.S.

The proposed rule contains a schedule of tasks that will address the protection of the natural environment of the Florida Keys, the requirement to submit an annual report, and the identification of tasks under the Work Program to be reported in the Department of Community Affairs written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater and Stormwater Master Plans through the financing and construction of additional wastewater and stormwater treatment facilities; the continued implementation of the Florida Keys Carrying Capacity Study through the analysis of hurricane evacuation issues and development of a Memorandum of Understanding regarding hurricane evacuation clearance time modeling and future build out of the keys. Additional planning tasks include an annual schedule to apply for funding to address land acquisition needed for environmentally sensitive parcels that have not competed well in the building permit allocation system and are eligible to have an offer for land acquisition or given a permit.

Central Wastewater Construction	unfunded	\$ 115,000,000.
Administrative relief (land acquisition)		\$ 750,000.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

This is an ongoing program with existing staff involved in the growth management implementation at the local and state level, no new costs are anticipated.

d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

Assessments:	3,100 OSDTS x \$5,700 =	\$ 17,670,000.
Permits to abandon septic tanks :	3,100 OSDTS x \$50.00 =	\$ 155,000.
Residential plumbing cost to connect to collection line:	3,100 OSDTS x \$3,000 =	\$ 9,300,000.

(e) An analysis of the impact on small businesses as defined by s.288.703, and an analysis of the impact on small counties and small cities as defined in by s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

A small business may be served by an onsite system or a package plant. The estimated cost to upgrade a package plant without connection to central wastewater is as follows:

Systems treating 10,000 gallons per day (gpd)-50,000 gpd (\$10 per gallon)	\$	250,000.
Systems treating 50,000 gpd - 100,000 gpd (\$5 per gallon)	\$	500,000.
Permits to abandon wastewater injection wells 64 package plants x \$ 25 =	\$	1,600.

(f) Any additional information that the agency determines may be useful.

The benefits of adopting a rule and implementing the legislation will be improvements to nearshore water quality. The Florida Keys are dependent on tourism for their economic base. Tourism from water-based activities (kayaking, snorkeling, scuba, etc.) contributes up to \$1.2 Billion per year. Recreation/commercial fishing contributes \$557 million per year to the economy with commercial fishing being the second largest industry in the Florida Keys.¹ Because of the recreational and commercial importance of the marine resources of the Florida Keys, protecting these resources is valuable not only for the environment but also for the economy.

In addition to the benefits from an improvement in nearshore water quality, the following benefits can be expected:

- Increased jobs constructing collections systems,
- Increased demand for plumbing contractors
- Increases sales of plumbing supplies in local stores
- Increased value of real estate
- Offsets increased costs to determine Total Maximum Daily Load for stormwater management
- Increased jobs in City administering central sewer
- Decreased maintenance costs to owners of package plants to businesses
- Decreased maintenance costs to residential on-site sewage systems
- Increased revenues to Department of Health

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

N/A

¹ December 2007. Florida Keys National Marine Sanctuary Revised Management Plan.
http://floridakeys.noaa.gov/pdfs/2007_man_plan.pdf



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

April 11, 2011

VIA HAND DELIVERY

Ms. Liz Cloud, Chief
Bureau of Administrative Code
and Weekly
R.A. Gray Building, Room 101
500 South Brohough Street
Tallahassee, Florida 32399-0250

FILED
2011 APR 11 PM 2:25
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

Re: Rule 28-20.140, Fla. Admin. Code
Filing for Adoption

Dear Ms. Cloud:

Enclosed is the certification package for filing this rule for adoption.

I would like to mention a technical change which has been approved by Brian Moore (JAPC). In (5)(a)1., "into the Comprehensive Plan" has been deleted. Mr. Moore said it was redundant and, therefore, unnecessary.

If you have any questions regarding this rule, please contact me. My address is listed below and my e-mail address is paula.ford@dca.state.fl.us. My direct telephone number is 922-1682.

Thank you.

Sincerely yours,


Paula P. Ford
Agency Clerk

ppf/

Enclosure(s)

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100

850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

CERTIFICATION OF ADMINISTRATION COMMISSION
ADMINISTRATIVE RULES FILED WITH THE DEPARTMENT OF STATE

I hereby certify:

- (1) That all statutory rulemaking requirements of Chapter 120, F.S., and all rulemaking requirements of the Department of State have been complied with; and
- (2) That there is no administrative determination under Section 120.56(2), F.S., pending on any rule covered by this certification; and
- (3) All rules covered by this certification are filed within the prescribed time limitations of Section 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by Section 120.54(3)(a), F.S.; and
 - (a) Are filed not more than 90 days after the notice; or
 - (b) Are filed more than 90 days after the notice, but not more than 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete; or
 - (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or
 - (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or
 - (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or
 - (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or
 - (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or
 - (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or
 - (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the Small Business Regulatory Advisory Committee.

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TALLAHASSEE, FLORIDA

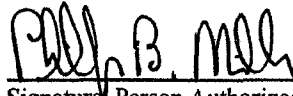
Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No(s).

28-20.140

Under the provision of Section 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



Signature, Person Authorized to Certify Rules

Title _____
Secretary, Administration Commission

8 _____
Number of Pages Certified

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2011 APR 11 PM 2:25
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ADMINISTRATION COMMISSION

Rule No.: RULE TITLE

28-20.140: Comprehensive Plan

THE FULL TEXT OF THE PROPOSED RULE IS:

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 Section 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.

(4) Policy 216.1.19. Hurricane Modeling.

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.
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.
7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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)(h) 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 Sugarloaf) 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; and
 - 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.
- i. 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 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History—New _____.

ADMINISTRATION COMMISSION

Rule Chapter 28-20, Fla. Admin. Code

SUMMARY OF THE RULE

The proposed amendments to Rule 28-20 specify the conditions under which the Monroe County Comprehensive Plan will be superceded and to amend the Work Program as directed by the Administration Commission. Specifically, the proposed rules for the Monroe County Comprehensive Plan identify the individual Work Program tasks set forth in Rule 28-20.110 F.A.C., and the completion dates of the Work Program tasks necessary for consideration by the Administration Commission prior to Removal of the Area of Critical State Concern Designation. As required by Section 380.0552(4), Florida Statutes, the Work Program tasks specified in Administration Commission rules must be reported annually. The protection of the natural environment of the Florida Keys, and the identification of and progress in accomplishing the tasks under the Work Program (as set forth in Rule 28-20.110, F.A.C.) is reported to the Department of Community Affairs for the preparation of a written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater Master Plan and the construction of wastewater treatment and collection facilities; the continued implementation of the Florida Keys Carrying Capacity Study; the identification and completion of stormwater projects; and the analysis of hurricane evacuation issues in the Florida Keys.

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DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

ADMINISTRATION COMMISSION

Rule Chapter 28-20, Fla. Admin. Code

STATEMENT OF FACTS AND CIRCUMSTANCES

JUSTIFYING THE RULE

The proposed amendments to Rule 28-20 amend the Work Program as set forth in Rule 28-20.110 F.A.C., and are needed to update the rule to implement the Section 380.0552(4), Florida Statutes, annual reporting requirement to the Administration Commission describing the progress of the Monroe County in completing the remaining tasks under the Work Program as set forth in Rule 28-20.110, F.A.C., that are necessary prior to the removal of the Florida Keys Area of Critical State Concern designation.

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DEPARTMENT OF COMMUNITY AFFAIRS

Division of Community Planning

Rules 28-20.130 and 28-20.140 Fla. Admin. Code

SUMMARY OF HEARING

A rule adoption hearing was held at 9:00 a.m. on January 10, 2011 at the Randall Kelley Training Room, Third Floor, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The purpose of the hearing was to receive comments on proposed Rules 28-18.100, 28-18.300, 28-18.400; 28-19.300, 28-19.310; 28-20.130 and 28-20.140 F.A.C. as published in the Florida Administrative Weekly on December 17, 2010. DCA staff attending the hearing included Charles Gauthier, Richard Shine, Rebecca Jetton, and Barbara Powell. Attendees included Roman Gastesi, Christine Hurley, Karen Peterson, Liz Wood, Ed Koconis, James White, Gerald Briggs, Judith Clarke, Susan Grimsly, John Herin, Suzanne Hutton, Kathy Grasser, Bob Shillinger, Mitch Harvey, Nina Boniski

Richard Shine opened the hearing and briefly explained the rulemaking process, the purpose of the hearing, and the requirements regarding the submission and use of comments on the proposed rules. Richard Shine requested comments for Monroe County Rules 28-20.130 and 28-20.140. Comments were received from Roman Gastesi, Christine Hurley and Suzanne Hutton which focused on the rules being consistent with the Monroe County Sanitary Master Wastewater Plan as required by 403.086(10), Florida Statutes. Comments were also received regarding the issue of enforcement for the upgrading of septic tanks. The County maintained that the Department of Health has the statutory authority and responsibility to conduct enforcement activities. Further discussions took place regarding duplication of statutory language within the rules and ensuring that the rule did place requirements on the County that they were not within their power to complete. The County requested that dates within the implementation schedule be changed to reflect their current/planned funding schedules. Richard Shine closed the rule adoption hearing after all attendees had an opportunity to provide comments.

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Statement of Estimated Regulatory Costs

Department of Community Affairs

Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by Section 120.541, Florida Statutes (F.S.). However, an agency shall prepare a statement of estimated regulatory costs of the proposed rule, as provided by Section 120.541, F.S. and by House Bill 1565 if the proposed rule will have an impact on small business.

Proposed Administration Commission Rules:

Monroe County:

Rule 28-20.130 F.A.C. Work Program Administration (New Rule Section)

Rule 28-20.140 F.A.C. Comprehensive Plan (New Rule Section)

Summary of Rules:

Monroe County: Proposal to adopt a new rule for the Monroe County Comprehensive Plan to incorporate the Section 380.0552(4), F.S. requirements for annual reporting to the Administration Commission describing the progress of Monroe County in accomplishing the tasks under the Work Program as set forth in proposed Rule 28-20.140, Florida Administrative Code (F.A.C.) and to determine whether progress has been achieved for removal of the Florida Keys Area of Critical State Concern designation.

Subject Area to Be Addressed:

The improvement of near shore water quality and the protection of the natural environment of the Florida Keys, and the identification of and progress in accomplishing the tasks under Work Program (as set out in proposed Rule 28-20.140, F.A.C.) to be reported in the Department of Community Affairs written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater and Stormwater Master Plans through the financing and construction of additional wastewater and stormwater treatment facilities; the continued implementation of the Florida Keys Carrying Capacity Study through the analysis of hurricane evacuation issues and development of a Memorandum of Understanding regarding hurricane evacuation clearance time modeling and future build out of the keys. The implementation of the Carrying Capacity Study through continued applications for funding to address land acquisition and strengthening of growth management regulations. These regulations are needed to guide development toward areas served by advanced wastewater treatment facilities and to steer development away from environmentally sensitive land containing Tropical Hardwood Hammocks that provide habitat for State and Federal listed endangered species.

Law Implemented:

Section 380.0552(4), F.S.
Rule 28-20.110, F.A.C.
Section 381.0065(4), F.S.
Section 403.086(10), F.S.

Specific Authority:

Section 380.0552(9), F.S.
Section 380.05(22), F.S.
Section 380.05(22)(b), F.S.
Section 120.536(1), F.S.
Section 120.54, F.S.

Statement of Estimated Regulatory Costs (SERC):

A SERC must include all of the information required by Sections 120.541(2)(a)-(g), F.S. The Department's SERC for proposed Rules 28-20.130 and 28-20.140 F.A.C., is set forth below in order of statutory sub-section. The language of each statutory sub-section is set forth in bold print followed by the Department's response.

120.541(2)(a) An economic analysis showing whether the rule directly or indirectly:

- 1. Is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule;***
- 2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or***
- 3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.***

The Florida Keys proposed rule will trigger 120.541(2)(a)3., F.S.

(b) A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

This rule will affect approximately 92,000 residents and up to 30,000 tourists county-wide. The proposed rule will directly impact 15,438 owners of On Site Sewage Treatment and Disposal Systems and 115 package plants. The marine ecosystem of the Florida Keys is dependent on clear water with low levels of nutrients. Ongoing research has determined that nutrients from wastewater are one of the major contributors to the decline of the water quality in the Florida Keys. Tourism and the coral reef community are dependent upon clean water. Historically, the Florida Keys has relied upon On Site

Sewage Treatment and Disposal systems to and small package plants for the treatment of residential and commercial human waste. The wastewater treatment and disposal requirements of Chapter 99-395, L.O.F, were enacted by the Legislature of the State of Florida in 1999 and updated by s.381.0065(4), and s.403.086(10), F.S..

The proposed rule contains a schedule of tasks that will address the protection of the natural environment of the Florida Keys, the requirement to submit an annual report, and the identification of tasks to be reported in the Department of Community Affairs written annual report to the Administration Commission. The Work Program tasks include the continued implementation of the Wastewater and Stormwater Master Plans through the financing and construction of additional wastewater and stormwater treatment facilities; the continued implementation of the Florida Keys Carrying Capacity Study through the analysis of hurricane evacuation issues and development of a Memorandum of Understanding regarding hurricane evacuation clearance time modeling and future build out of the keys. Additional planning tasks include an annual schedule to apply for funding to address land acquisition needed for environmentally sensitive parcels that have not competed well in the building permit allocation system and are eligible to have an offer for land acquisition or given a permit.

Central Wastewater Construction	unfunded	\$330,000,000.
Administrative relief (land acquisition)		\$ 800,000 to \$ 2,000,000.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

This is an ongoing program with existing staff involved in the growth management implementation at the local and state level, no new costs are anticipated.

d) A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section paragraph, "transactional costs" are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

Assessments:	19,145 OSDTS x \$5,700 =	\$109,126,500.
Lower keys assessment:	3,855 OSDTS \$25,000 =	\$ 96,375,000.
Permits to abandon septic tanks :	15,438 OSDTS x \$50.00 =	\$ 771,900.
Residential plumbing cost to connect to collection line:	15,438 OSDTS x \$3,000 =	\$ 46,314,000.

(e) An analysis of the impact on small businesses as defined by s.288.703, and an analysis of the impact on small counties and small cities as defined in by s. 120.52. The impact analysis for small

businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

A small business may be served by an onsite system or a package plant. The estimated cost to upgrade a package plant without connection to central wastewater is as follows:

Systems treating 10,000 gallons per day (gpd)-50,000 gpd (\$10 per gallon)	\$	250,000.
Systems treating 50,000 gpd - 100,000 gpd (\$5 per gallon)	\$	500,000.
Permits to abandon wastewater injection wells 115 package plants x \$25 =		\$2,875.

(f) Any additional information that the agency determines may be useful.

The benefits of adopting a rule and implementing the legislation will be improvements to nearshore water quality. The Florida Keys are dependent on tourism for their economic base. Tourism from water-based activities (kayaking, snorkeling, scuba, etc.) contributes up to \$1.2 Billion per year. Recreation/commercial fishing contributes \$557 million per year to the economy with commercial fishing being the second largest industry in the Florida Keys.¹ Because of the recreational and commercial importance of the marine resources of the Florida Keys, protecting these resources is valuable not only for the environment but also for the economy.

In addition to the benefits from an improvement in nearshore water quality, the following benefits can be expected:

- Increased jobs constructing collections systems,
- Increased demand for plumbing contractors
- Increases sales of plumbing supplies in local stores
- Increased value of real estate
- Offsets increased costs to determine Total Maximum Daily Load for stormwater management
- Increased jobs administering central sewer
- Decreased maintenance costs to owners of package plants to businesses
- Decreased maintenance costs to residential on-site sewage systems
- Increased revenues to Department of Health

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

N/A

¹ December 2007. Florida Keys National Marine Sanctuary Revised Management Plan.
http://floridakeys.noaa.gov/pdfs/2007_man_plan.pdf