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MEMORANDUM
MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Planning Commission

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

From: Michael Roberts, CEP; PWS; CFM; Assistant Director – Environmental Resources

Date: April 13, 2021

Subject: A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING APPROVAL OF AN ORDINANCE BY MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND CHAPTER 118 TO ELIMINATE REDUNDANT OR OBSOLETE TEXT, REFINE CODE LANGUAGE TO BETTER CLARIFY REGULATORY INTENT FOR THE BENEFIT OF THE REGULATED COMMUNITY AND COUNTY STAFF, UPDATE LISTS OF SPECIES AND CORRECT SCRIVENER’S ERRORS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-184)

Meeting: April 28, 2021

I. REQUEST

Amendments to the Monroe County Land Development Code were adopted in April, 2016 and became effective in February 2017. Upon implementation, the Planning and Environmental Resources Department has identified certain Sections of the amended Code that require revision for purposes of clarity or to better further the Goals, Objectives and Policies of the Comprehensive Plan.

II. BACKGROUND INFORMATION

The Monroe County Board of County Commissioners adopted the 2016 Land Development Code (Ordinance 006-2016) at a special meeting on April 16, 2016.

Since adoption of the 2016 Code, the Planning and Environmental Resources staff has identified sections of Chapter 118 that contain redundant or obsolete text, as well as sections where it is necessary to refine code language to better clarify regulatory intent for the benefit of the regulated community and county staff and the need to update lists of species and correct scrivener’s errors throughout the Chapter.

1 **Community Meeting and Public Participation**

2 Community Meeting and Public Participation

3 In accordance with LDC Section 102-159(b)(3), Community Meetings were held virtually on September
4 23, 2020 and November 4, 2020 to provide for public input. There were 24 attendees, inclusive of nine
5 County staff members at the 9/23 meeting. Based on public input during and subsequent to the
6 Community Meeting, a second Community Meeting was held on November 4, 2020. Attendance at this
7 meeting consisted of twelve members of the public and eight staff members.

8
9 Members of the public provided comments at both meetings and via e-mail. All written comments are
10 provided in Appendix 1.

11
12 **Development Review Committee and Public Input**

13
14 On March 23, 2021 the Development Review Committee (DRC) held a virtual public meeting to review
15 the proposed amendments and receive public input.

16
17 **Public Input**

18
19 Public comment received in the community meetings and DRC included the following comments:

- 20
21 • Issues of 4 post boat lifts in boat basins
22 • Is there scientific evidence that wrapping the pilings reduces toxins from leaching?
23 • There were some comments questioning the scientific basis of requiring CCA treated pilings to
24 be treated and claims of “junk science”.

Staff is not aware of data reflecting the effectiveness of wrapping or substitute materials. There is published, peer-reviewed research on the negative impacts of CCA treated pilings in the marine environment. The only published studies that staff found that refuted the negative impacts of CCA leachate to the marine environment were studies published in trade journals for the lumber industry.

- 25 • What happens if one piling is replaced? Does the whole dock become nonconforming?
26 • Any other types of besides wood wrapped pilings? Are other materials allowed besides wood?
27 • Does all wood piling have to be “wrapped”?

Staff has not provided specific criteria – however the intent is that new pilings be compliant. If the proposed work does not constitute substantial improvement, only the new work would be required to meet current Code requirements. Only CCA treated pilings are of concern, pilings not containing chromated copper-arsenic are not required to be wrapped

- 28 • When do these changes become effective?

Upon adoption by the BOCC following review by the Florida Department of Economic Opportunity (DEO).

- 1 • Consider changing 4 foot depth requirements because it forces the docks out so far. 4 ft rule is
2 an arbitrary number.; 3 feet might be just as good.
- 3 • Maintenance dredging for habitats that have seagrass – better to dredge basins

4 The four foot above MLW criteria and the restriction on maintenance dredging that impacts
5 seagrasses are both established in the Comprehensive Plan and revising these Codes would
6 require amendments to the Comprehensive Plan.

- 7 • Special approvals – what does this apply to? All of 118? All of the dock section? This should
8 include the whole chapter.

Special approvals under Section 118-12(o) apply to all of Section 118-12 (Shoreline
Setbacks), not the entire Chapter.

- 9 • Conservation Easements – does the addition of a deck (or accessory structure) require a
10 conservation easement?

11 Accessory structures that impact native upland habitat may trigger the necessity for
12 recording a Conservation Easement.

14 **Previous County Action**

15 On September 2, 2015 the BOCC held public hearings to review and discuss proposed amendments to
16 the Land Development Code to be consistent with the transmitted Monroe County Year 2030
17 Comprehensive Plan, the results of the Comprehensive Plan Technical Document update, the adopted
18 2012 Evaluation and Appraisal Report and the 2014 Evaluation and Appraisal Notification Letter.
19 Chapters reviewed at the September hearing included, among others, 114 Development Standards; and
20 118 Environmental Protection.

21
22 On March 1, 2016, at a special public meeting, the BOCC held the first of two public hearings to consider
23 adoption of the Monroe County 2030 Comprehensive Plan and the proposed amendments to the Land
24 Development Code to be consistent with the Monroe County Year 2030 Comprehensive Plan.

25
26 On April 13, 2016 at a special public meeting, the Monroe County Board of County Commissioners
27 adopted Ordinance No. 006-2016, amending the Land Development Code to be consistent with the
28 transmitted Monroe County Year 2030 Comprehensive Plan, the results of the Comprehensive Plan
29 Technical Document update, the adopted 2012 Evaluation and Appraisal Report and the 2014 Evaluation
30 and Appraisal Notification Letter.

32 **III. PROPOSED LAND DEVELOPMENT CODE TEXT AMENDMENTS**

34 **Sec. 118-1. Purpose of Environmental Performance Standards.**

35 It is the purpose of this chapter to provide for the conservation and protection of the environmental
36 resources of ~~the Florida Keys~~ [Monroe County](#) by ensuring that the functional integrity of natural areas is
37 protected when land is developed.

39 **118-2. Existing Conditions Report.**

(c) *Plant species list.* A list of species found in the survey, and those proposed for removal (if applicable), provided in a matrix with a minimum of the following five columns:

- (1) Common Name;
- (2) Scientific Name;
- (3) Status - Indicate species' status as TH: Threatened; END: Endangered; RI: Regionally Important; ~~SSC: Species of Special Concern~~ RM: those species identified in this Section as reaching Reproductive Maturity at less than four inches diameter at breast height (DBH); N: Non-listed Native; EX: Exotic; INV: Invasive Exotic; or other status;
- (4) Number and Size to Remain
 - a. For those species listed as TH/END/RI/~~SSC~~, indicate the number of plants to remain on the site and their sizes;
 - b. For those species named in this Section as reaching reproductive maturity at less than four (4) inches in diameter at breast height (DBH), ~~estimate~~ indicate the ~~total~~ number of reproductively mature plants to remain on the site ~~regardless of size~~;
 - c. For all other native species, ~~estimate~~ indicate the ~~total~~ number of plants to remain on the site, ~~and the number~~ with a DBH of 4 inches or greater.
- (5) Number and Size to Be Removed (if applicable)
 - a. For those species listed as TH/END/RI, indicate the number of plants to be removed and the size of each plant;
 - b. For those species named in this Section as reaching reproductive maturity at less than four (4) inches diameter at breast height ~~in~~ (DBH), indicate the ~~total~~ number of reproductively mature plants to be removed ~~regardless of size~~ and the size of each plant;
 - c. For all other native species, indicate the number of plants to be removed with a DBH of four (4) inches or greater.

Common Native Species Reaching Reproductive Maturity at Less Than Four (4) inches DBH	
Beautyberry	<i>Callicarpa americana</i>
<u>Cat's claw</u>	<u><i>Pithecellobium unguis-cati</i></u>
Cockspur	<i>Pisonia aculeata</i>
Cocoplum	<i>Chrysobalanus icaco</i>
Dahoon holly	<i>Ilex cassine</i>
False willow	<i>Baccharis angustifolia</i>
Green buttonwood	<i>Conocarpus erectus</i>
Jamaica caper	<i>Capparis cynophallophora</i>
Limber caper	<i>Capparis flexuosa</i>
Marlberry	<i>Ardisia escallonioides</i>
Myrsine	<i>Myrsine floridana (cubana)</i>
Randia	<i>Randia aculeata</i>
<u>Rougeplant; Rouge bush</u>	<u><i>Rivinia humilis</i></u>
Saltbush	<i>Baccharis halimifolia</i>
Saw palmetto	<i>Serenoa repens</i>
Silver buttonwood	<i>Conocarpus erectus var. sericeus</i>

Snowberry	<i>Chiococca alba</i> <u>or <i>Chiococca pinetorum</i></u>
Snowberry	<i>Chiococca pinetorum</i>
Spanish stopper	<i>Eugenia foetida</i>
Tallowood	<i>Ximenia americana</i>
Wax myrtle	<i>Myrica cerifera</i>
White stopper	<i>Eugenia axillaris</i>
Wild coffee	<i>Psychotria nervosa</i>

(e) *Site plan.* A site plan identifying the proposed development at a scale of at least one inch equals 20 feet ~~or greater~~ showing the location and sizes of the following:

- (1) all listed threatened and endangered native plants ~~species; species of special concern;~~ and regionally important native plants ~~species;~~
- (2) all native plants ~~species~~ that reach reproductive maturity at less than four inches DBH, as named in this Section;
- (3) all other native plants ~~species~~ with a DBH of four inches or greater;
- (4) champion trees (listed nationally by the State of Florida);
- (3)(5) native specimen trees (with a DBH greater than seventy-five percent of the record tree of the same species for the State of Florida);
- (4)(6) the extent of wetlands;
- (5)(7) areas of disturbance and invasive exotic species; and
- (6)(8) proposed boundary of area(s) to be cleared and location of species to be removed (if applicable), including, but not limited to, building footprint, construction impact zone as defined in Section 101-1, installation of buried utilities, driveways and walkways.

Sec. 118-3. Administration and Compliance.

Before a certificate of occupancy or final inspection approval may be issued for any structure, portion, or phase of a project subject to this chapter, a grant of conservation easement running in favor of the County shall be approved by the Planning Director and the County Attorney and recorded in the official public records of the County for any conservation easement required pursuant to Sections 118-9, 118-10(d)(7), 118-12(b)(4)b, and 118-12(c)(2), or elsewhere in this chapter at the applicant's expense. The conservation easement shall state the amount of required upland native vegetation protected area and the prohibited activities within that protected area ~~open space and prohibit activities within that open space~~, including removal, trimming or pruning of native vegetation; acts detrimental to wildlife or wildlife habitat preservation; excavation, dredging, removal or manipulation of the substrate; activities detrimental to drainage, flood control, or water or soil conservation; dumping or placing soil, trash, or other materials; and any other restrictions as may be stated on the conservation easement. Fencing shall not be allowed in a conservation easement unless the fencing abuts developed land and contributes to the protection of the conservation area. Fence construction shall be completed with hand tools and not cause any form of tree abuse. No areas subject to the conservation easement shall be less than five feet in width.

Sec. 118-4. Wetland Open Space Requirements.

1 ~~No development activities, e~~ Except as provided for in this chapter, no development activities are
2 permitted in submerged lands, mangroves, salt ponds, freshwater wetlands, freshwater ponds, or in
3 undisturbed salt marsh and buttonwood wetlands; the open space requirement is 100 percent.
4

5 Allocated density (dwelling units per acre) shall be assigned to freshwater wetlands and undisturbed salt
6 marsh and buttonwood wetlands only for use as transferable development rights away from these
7 habitats. Submerged lands, salt ponds, freshwater ponds and mangroves shall not be assigned any density
8 or intensity.
9

10 **Sec. 118-7. General Environmental Design Criteria.**

11 **No land shall be developed except in accordance with the following general criteria:**

12 (a) Development shall not disturb the following vegetation:

- 13 (1) champion trees (listed nationally or in the State of Florida);
- 14 (2) native specimen trees (diameter at breast height that is greater than seventy-five percent
15 [75%] of the record tree of the same species for the State of Florida); and
- 16 (3) plant species listed by the USFWS as threatened or endangered.
17

18 (b) To the maximum extent practicable, development shall be sited so as to preserve all listed threatened
19 and endangered native plant species; species of special concern; ~~and~~ regionally important native plant
20 species. In those instances where an applicant can demonstrate that avoidance of such species is not
21 possible by clustering or by an alternate design approach, then the applicant shall make a payment
22 into the Monroe County Land Management and Restoration Fund in accordance with Section 118-
23 8.
24

25 (c) The habitat of protected plants and animals (including but not limited to species listed as endangered,
26 threatened, species of special concern, or protected under ~~laws such as the Migratory Bird Treaty~~
27 ~~Act~~ State or Federal law) shall be preserved to the maximum extent practicable through the
28 configuration of ~~open space~~ protected natural areas. Habitat includes, but is not limited to, foraging,
29 roosting, breeding, and natural and artificial nesting habitat. This includes, but is not limited to, bird
30 rookeries and bird nesting ~~colonies~~ areas. No habitat of protected species shall be disturbed without
31 prior notification and approval by the County Biologist. Impacts to endangered species habitat that
32 result in a “May Affect” determination through the application of the U.S. Fish and Wildlife Service
33 (USFWS) Species Assessment Guides will require coordination with the USFWS in accordance with
34 Chapter 122-8.
35

36 **Sec. 118-8. Mitigation Standards and County Environmental Land Management and Restoration**
37 **Fund.**

38 (a) *Mitigation standards.* Unless alternative mitigation is approved as part of a minor or major
39 conditional use pursuant to Section 118-6, the removal of any listed threatened or endangered
40 native plants ~~species~~; any regionally important native plants ~~species~~; any native plants ~~species~~ that
41 reaches reproductive maturity at less than four (4) inches diameter breast height (DBH) as
42 identified in Section 118-2(c); and any other native plants ~~species~~ with a ~~diameter at breast height~~
43 DBH of four inches or greater shall require payment to the Monroe County Environmental Land
44 Management and Restoration Fund in an amount sufficient to replace each removed plant or tree
45 on a 2:1 basis, as determined in accordance with subsection (b). The number, species, and sizes of

1 trees and plants to be mitigated shall be identified in the existing conditions report provided
2 pursuant to Section 118-2 and approved by the County Biologist.

3 **Sec. 118-9. Clearing Allowances.**

4 (a) *Purpose.* It is the purpose of this Section to provide for ~~open-space~~protected areas as a part of a
5 development plan in order to ensure the continued existence of natural wildlife habitat and to
6 provide open green areas for the movement, aesthetics, and safety of the human population utilizing
7 the development. ~~Native-plant~~Upland native vegetation communities shall be considered required
8 ~~open-space~~protected natural areas and shall not be cleared or otherwise disturbed, beyond the limits
9 specified in subsection (b), including ground cover, understory, midstory, and canopy vegetation.
10 All such areas shall be maintained in their natural condition and shall be protected by a grant of
11 conservation easement running in favor of the County.

12
13 (c) *Baseline conditions.* The legal conditions of land existing as of February 28, 1986, and as
14 depicted on the December 1985 Habitat Classification Aerial Photographs, shall be used as a
15 baseline to determine the clearing that may be permitted on a site. The 1985 maps shall be
16 supplemented by recent aerial photography and existing site analysis to determine any increases
17 in the amount of upland native vegetated areas. Upland native vegetated areas cleared between
18 1986 and the time of permit application shall be considered to still include upland native
19 vegetation for purposes of determining the amount of ~~open-space~~protected natural areas and
20 clearing permitted.

21
22 (d) *Ocean Reef Club clearing.* For the purpose of this Section, upland native vegetated areas in the
23 Ocean Reef Club shall be limited to clearing of 40 percent of the upland native ~~vegetated~~
24 areasvegetation.

25
26 (g) *Vesting provisions.* Applications for building permits received prior to January 13, 2013, and any
27 building permits issued or to be issued pursuant to an active conditional use permit development
28 order approved prior to January 13, 2013, shall be permitted to use the clearing allowances in
29 effect at the time of building permit application or approved in the conditional use permit.
30 Redevelopment of a site where clearing of native upland vegetation communities was authorized
31 in excess of standards of 118-9(b) shall be limited to the approved clearing footprint of the
32 previously issued building permit. Any revisions to the extent of clearing approved by the
33 building permits or conditional use permits referenced above shall be required to comply with
34 the clearing limits currently in effect.

35 **Sec. 118-10. Environmental Design for Specific Habitat Types.**

36 In addition to the general criteria set forth in this chapter, specific criteria shall apply to individual
37 habitats as outlined in this Section.

38 (a) *Hammock.* All structures developed, used or occupied on land classified as hammock (all types
39 and all levels of quality) shall be designed, located and constructed such that:

40 (1) All ~~areas-of-required-open-space~~required protected natural areas are maintained in their
41 natural condition, including the preservation of canopy, midstory, understory vegetation,
42 ground cover and leaf litter layer; and

1 (2) Clearing of native vegetation is limited to the area of approved clearing shown on the
2 approved site plan, which shall include a construction impact zone around all structures.
3 Construction barriers shall be required at the outer edge of the construction impact zone and
4 shall be visible and of durable material such as wood, fabric, wire fencing, plastic safety
5 fencing, or similar types that provide openings to allow the passage of wind and water through
6 them. Barriers shall be staked and remain in place and maintained in a functional condition
7 until final inspection for a certificate of occupancy has been approved. During construction,
8 there shall be no disturbances of the ground surface and vegetation within required ~~open~~
9 spaceprotected natural areas.

10 (b) *Pinelands*. All structures developed, used or occupied on land classified as pinelands (all types and
11 all levels of quality) shall be designed, located and constructed such that:

12 (1) All required protected natural areas ~~of required open space~~ are maintained in their natural
13 condition, including canopy, midstory, understory vegetation, and ground cover. Dead
14 vegetative matter, including leaf litter layer, may be removed for fire safety; and

15 (2) All structures are separated from the body of the pinelands by a clear, unvegetated fire break
16 of at least 15 feet width. Any clearing required to create this firebreak shall be deducted from
17 the total area of clearing allowed for the parcel. Clearing of native vegetation shall be limited
18 to the area of approved clearing shown on the approved site plan, and the required firebreak.
19 Construction barriers shall be required at the outer edge of the area to be cleared and shall be
20 visible and of durable material such as wood, fabric, wire fencing, plastic safety fencing, or
21 similar types, that provide openings to allow the passage of wind and water through them.
22 Barriers shall be staked and remain in place and maintained in a functional condition until
23 final inspection for a certificate of occupancy has been approved. During construction, there
24 shall be no disturbances of the ground surface and vegetation within required ~~open~~
25 spaceprotected natural areas.

26 (d) *Mangroves, wetlands, and submerged lands*. All structures developed, used or occupied on land
27 classified as mangroves, wetlands or submerged lands (all types and all levels of quality) shall be
28 designed, located and constructed such that:

29 (1) *Generally*. Only docks and docking facilities, boat ramps, walkways, water access walkways,
30 water observation platforms, boat shelters, nonenclosed gazebos, riprap, seawalls, bulkheads,
31 automobile or pedestrian access to lawfully established dwelling units located on upland
32 areas and utility pilings shall be permitted on or over mangroves, wetlands, and submerged
33 lands, subject to the specific restrictions of this subsection. Trimming and/or removal of
34 mangroves shall meet Florida Department of Environmental Protection requirements.

35 (4) *Placement of fill*. No fill shall be permitted in any mangroves, wetlands, or submerged lands
36 except:

37 a. As specifically allowed by this Section or by Section 118-12(k) (Bulkheads, Seawalls,
38 Riprap) and 118-12(l) (Boat Ramps);

39 b. To fill a manmade, excavated water body such as a canal, boat ramp, boat slip, boat
40 basin or swimming pool if the County Biologist determines that such filling will not
41 have a significant adverse impact on marine or wetland communities provided

regulatory approval by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers is received prior to the commencement of development or construction and/or prior to issuance of a County 'Notice to Proceed';

- c. As needed for shoreline stabilization or beach renourishment projects with a valid public purpose that furthers the goals of the Monroe County Comprehensive Plan, as determined by the County Biologist;
- d. For bridges extending over ~~salt marsh and/or buttonwood association~~ wetlands that are required to provide automobile or pedestrian access to lawfully established dwelling units located on upland areas within the same property for which there is no alternate means of access. Such bridges shall be elevated on pilings so that the natural movement of water, including volume, rate and direction of flow shall not be disrupted or altered; or
- e. As approved for Disturbed Salt Marsh and Buttonwood Association Wetlands with appropriate mitigation as defined by the wetland regulations of subsection (e)(6) of this Section.

(7) *Vegetated buffer required between development and wetlands.* Except as allowed in Section 118-7 (general environmental design criteria), a minimum vegetated setback of 50 feet shall be maintained as an open space buffer and shall be protected by a grant of conservation easement running in favor of the County for development occurring adjacent to all types of wetlands, with the following exceptions:

- a. If a 50-foot setback results in less than 2,000 square feet of principal structure footprint of reasonable configuration, then the setback may be reduced to allow for 2,000 square feet of principal structure footprint of reasonable configuration, provided that the setback is not reduced to less than 25 feet.
- b. On properties classified as scarified adjacent to wetlands, the wetland setback may be reduced to 25 feet, without regard to buildable area, if the entire setback area:
 - 1. Is planted and maintained in native vegetation meeting the standards of a class D bufferyard or a bufferyard providing similar protection (Section 114-128 Bufferyard standards) with the exception that understory trees may be substituted for canopy trees;
 - 2. Contains a site-suitable stormwater management plan approved by the County Biologist; and
 - 3. Is placed under a conservation easement.
- c. The wetland setback required by this subsection shall not apply to mangrove or wetland fringes occurring along manmade canals, channels, or basins.
- d. The wetland setback required by this Section shall not apply to areas filled in accordance with 118-10(d)(6) where state and/or federal permits ~~restrict the fill to the development area only~~ establish limits of the fill.
- e. On properties where the wetland is located between the development and water (shoreline), the terms of the grant of conservation easement may be amended to allow up to a four-foot wide (4ft) boardwalk or similar water-access structure to allow access to the water. The terms may only be amended if the County Biologist makes written

1 findings of fact and conclusions of biological opinion that substantiate the need and/or
2 benefits to be derived from the amendment.

3 **Sec. 118-11. Environmental Restoration Standards.**

- 4 (a) In the event any land clearing is occurring on a site and such clearing is outside the scope of any
5 permit issued or for which no permit was issued, the Building Official or other authorized County
6 official shall issue a stop work order. If any land clearing has occurred for which no permit has
7 been issued or which is beyond the scope of an issued permit, such activity shall be subject to code
8 enforcement proceedings under Chapter 8. Except for issuance of an approved after-the-fact permit
9 for restoration, the stop work order shall remain in effect and no application for a building permit
10 shall be processed or issued for the site until the violation for unlawful land clearing is corrected
11 pursuant to subsection (b) of this Section.
12
13 (b) A land clearing violation is corrected if all of the following conditions are met in accordance with
14 a restoration site plan approved by the County Biologist:

15 (1) Submission of a restoration plan and site plan showing the location of the restoration
16 plantings.

17 ~~(1)(2)~~ The site shall be restored to its pre-violation grade.

18 ~~(2)(3)~~ Native canopy trees, understory and shrubs on the unlawfully cleared site shall be
19 replaced with native plant species as appropriate and ~~All native trees, shrubs, and~~
20 ~~groundcovers on the unlawfully cleared site shall be replaced with native plant species as~~
21 ~~appropriate to the site unlawfully cleared. The trees shall be of a size and maturity~~
22 ~~commensurate to the unlawful clearing as~~ determined by the County Biologist. Two canopy
23 and four understory trees will be required per 100 square feet of impact. A lesser density of
24 required trees and/or substituting shrubs for understory may be permitted at the discretion of
25 the County Biologist based upon written findings that the reduction is necessary. The
26 replanted canopy, understory and shrubs must be distributed evenly throughout the
27 restoration area(s) and may not be clustered in any one location. Canopy trees shall have a
28 minimum of three inches in diameter at breast height (DBH) or be at least ten feet tall,
29 understory shall be a minimum of five feet tall.~~The native species mix shall consist of the~~
30 ~~approximate percentages of the predominant tree, shrub and groundcover species on the site~~
31 ~~unlawfully cleared prior to the violation, but if any endangered or threatened tree, shrub or~~
32 ~~groundcover species were unlawfully cleared, then those species shall be replaced with plants~~
33 ~~of a size and maturity commensurate to and related to the unlawful clearing as determined by~~
34 ~~the County Biologist regardless of predominance.~~

35 ~~(3)(4)~~ All replanted trees, shrubs, and groundcovers shall be located on site within the same
36 areas that were unlawfully cleared.The species composition of the restoration plan shall
37 consist of a minimum of 20 percent of the species listed as endangered, threatened, or
38 regionally important.

39 ~~(4)(5)~~ The restoration work to correct the land clearing violation shall be deemed complete after
40 four passed inspections by the County Biologist. An initial restoration planting inspection is
41 required immediately after the installation of the replacement plants and inspections are
42 required annually for two years after the passed initial planting inspection. A final inspection
43 is required at the end of the third year after the initial planting inspection. A final inspection
44 may only be approved provided that three consecutive inspections as described in this section

1 have been approved. ~~A monetary guarantee for the restoration work, as stipulated in~~
2 ~~subsection (e) of this Section, shall be provided in the form of a surety bond, cash, or other~~
3 ~~financial guarantee in a form acceptable to the Planning Director and the County Attorney.~~
4 ~~(5)(6) The restoration work to correct the land clearing violation in accordance with subsections~~
5 ~~(b)(1)-(3) of this Section shall be required to receive final inspection approval by the County~~
6 ~~Biologist.~~

7 (c) Any violation for land clearing that has been corrected pursuant to subsection (b) of this section
8 shall be subject to the following additional conditions to ensure the growth and viability of the
9 restored habitat:

10 (1) ~~Except as expressly authorized by the County Biologist pursuant to an approved phased~~
11 ~~restoration site plan, The restoration area(s) shall be maintained free from all invasive exotic~~
12 ~~plant species shall be removed at least quarterly during the three year period described in~~
13 ~~subsection (e)(2) of this section.~~

14 (2) At least 80 percent of the trees replaced, as described in subsection (b)(2) of this Section,
15 shall be viable at the end of a three-year period from the date of the ~~final~~ first inspection of
16 the restoration work. Dead or dying trees may be replaced, subject to prior approval by the
17 County Biologist, during the three-year period in order to ensure the 80 percent minimum is
18 met at the end of three years. ~~The restoration work shall be inspected by the County Biologist~~
19 ~~on an annual basis during the three year period and shall require a final inspection at the end~~
20 ~~of the three year period.~~ The County Biologist may direct that dead or dying trees be replaced
21 as he or she deems necessary to ensure the 80 percent standard will be met at the end of the
22 three years.

23 (d) Failure to meet the conditions of subsection (c) of this Section shall be considered a violation of
24 this Land Development Code and subject to code enforcement proceedings under chapter 8.

25 (e) The permit holder ~~shall~~ may be required through a financial guarantee approved by the Planning
26 Director and the County Attorney, to guarantee the satisfactory completion of the restoration work
27 in accordance with the approved restoration site plan and the survival of at least 80 percent of the
28 replanted trees for a period of at least three years after the issuance of the after-the-fact permit for
29 the restoration work.

30 (1) *Guarantee amount.* The amount of the restoration guarantee shall cover the full costs of the
31 restoration work described in subsections (b)(1)-(3) of this Section. The estimated costs of
32 the restoration described in subsection (b) of this Section shall be the sum of subsections
33 (e)(1)a. and (e)(1)b. of this Section:

- 34 a. One-hundred percent of the estimated cost of the restoration described in subsection
35 (b)(1) of this Section as estimated by the County Engineer; or alternatively, 150 percent
36 of the price of a binding contract for the restoration work required by subsection (b)(1)
37 of this Section, entered into with a contractor qualified to perform such work.
- 38 b. One-hundred percent of the estimated cost, as estimated by the Building Official, of
39 performing the restoration work described in subsections (b)(2) and (b)(3) of this
40 Section; or, alternatively, 150 percent of the price of a binding contract for the

1 restoration work described in subsections (b)(2) and (3) of this Section, entered into
2 with a state licensed landscape architect.

3 (2) *Form of Guarantee.* The guarantee shall be in a form approved by the Planning Director and
4 the County Attorney. The guarantee shall be payable to the county in the amount of the
5 estimated total cost for restoration work as calculated in subsection (e)(1) of this Section, and
6 enforceable, on or beyond a date 36 months from the date of the permit issued for the
7 restoration work. Release of any guarantee shall be conditioned upon final approval by the
8 County Biologist of the restoration work as stipulated in subsection (c)(2) of this Section.
9

10 (3) *Default.* All guarantees shall provide that if the permit holder failed to complete required
11 restoration work in accordance with the restoration site plan and failed to comply with the
12 requirements of subsection (c)(2) of this Section, the Planning Director in consultation with
13 the County Attorney, may take the following action: inform the guarantee company in writing
14 of default by the permit holder and request that it take necessary actions to complete the
15 required improvements.
16

17 **Sec. 118-12. Shoreline Setback.**

18 (a) *Purpose.* The purpose of this Section is to allow for reasonable access between the land and water,
19 provide secure boat storage, ensure good water quality, provide an appearance consistent with
20 community character, protect structures from the effects of long-term sea level rise, protect beaches
21 and shores from erosion, protect over-water views, avoid adverse impacts on navigation, and
22 protect marine and terrestrial natural resources.

23 (b) *Principal structures.* Principal structures shall be set back as follows:

24 (1) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins,
25 principal structures shall be set back at least 20 feet as measured from the mean high water
26 (MHW) line, except as allowed in subsections (b)(2) and (b)(3) of this Section.

27 (2) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins, where
28 the 20-foot setback from an existing cut-in slip or boat ramp would result in less than 2,000
29 square feet of principal structure footprint of reasonable configuration, the setback from the
30 existing cut-in slip or boat ramp may be reduced to allow for 2,000 square feet of principal
31 structure footprint of reasonable configuration, provided that the setback is not reduced to
32 less than ten (10) feet from the MHW line of the slip or ramp.

33 (3) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins that, are
34 developed with a lawfully established principal use, principal structures on parcels less than
35 4,000 square feet may encroach a maximum of ten (10) feet into the required 20-foot
36 shoreline setback, provided that:

- 37 a. The total combined area of all structures, principal and accessory, does not occupy more
38 than 60 percent of the upland area of the required 20-foot shoreline setback;
- 39 b. The proposed development protects the character and over-water views of the
40 community;
- 41 c. Shoreline vegetation is protected;
- 42 d. Open space ratios are maintained; and

1 e. Stormwater runoff from the entire site is managed on-site using best management
2 practices utilizing berms and infiltrating runoff.

3 (4) Along open water shorelines not adjacent to manmade canals, channels, or basins, and which
4 have been altered by the legal placement of fill:

5 a. And where a mangrove fringe of at least ten feet in width occurs across the entire
6 shoreline of the property, principal structures shall be set back at least 30 feet as
7 measured from the MHW line or the landward extent of the mangroves, whichever is
8 farther inland.

9 b. And where no mangrove fringe of at least ten feet in width exists, principal structures
10 shall be set back at least 30 feet from the MHW line, provided that native vegetation
11 exists or is planted and maintained in a ten-foot width across the entire shoreline as
12 approved by the County Biologist, and is placed under a grant of conservation easement
13 running in favor of the County; otherwise the setback shall be 50 feet as measured from
14 the MHW line.

15 c. A Special Approval for Shoreline Setback Deviation is required On infill lots
16 surrounded by significant development where principal structures are set back less than
17 50 feet from mean high water (MHW) or the landward extent of mangroves, the
18 Planning and Environmental Resources Director may evaluate the community
19 character, the presence or absence of environmental features, and the setbacks on
20 adjacent developed properties within two parcels on either side of proposed
21 development, and may allow principal structures to be set back as far as practicable or
22 in line with adjacent principal structures. In no event shall the setback be less than 20
23 feet. On shorelines where the existing pattern of setback is greater than 30 feet, the
24 greater setback shall apply.

25 (5) Along unaltered and unlawfully altered shorelines located adjacent to natural nondredged
26 waterways and open water, principal structures shall be set back 50 feet as measured from
27 the MHW line or the landward extent of the mangroves, whichever is farther landward.

28 (c) *Accessory structures.* Accessory structures, as defined in Section 101-1, within the shoreline
29 setback shall be constructed at a foundation height not to exceed 18 inches above existing grade
30 and shall meet the following design criteria:

31 (1) Along lawfully altered shorelines adjacent to manmade canals, channels, and basins:

32 a. In no event shall the total, combined area of all structures occupy more than 60 percent
33 (60%) of the upland area of the required 20-foot shoreline setback.

34 b. Accessory structures, including, but not limited to, pools, spas, and any screen
35 enclosure over pools or spas shall be set back a minimum of ten (10) feet, as measured
36 from the MHW line. With the exception of docks and erosion control structures, an
37 accessory structure other than those listed above not exceeding 18 inches in height as
38 measured from grade may be permitted within the 20-foot shoreline setback if the
39 structure is situated at least one (1) foot from the MHW line and constructed to avoid
40 any off-site discharge of stormwater from the subject parcel in accordance with Section
41 114-3.

1 b.c. At grade decks not exceeding 6 inches in height as measured from grade may be
2 permitted within the shoreline setback if the structure is situated at least one (1) foot
3 from the MHW line and constructed to avoid any off-site discharge of stormwater from
4 the subject parcel in accordance with Section 114-3.

5 **Based on comments from the Florida Department of Economic Opportunity, the above**
6 **recommendations for 118-12(c)(1) b. and c. will be removed from the proposed amendments and**
7 **processed separately with a corresponding amendment to the Comprehensive Plan.**

8 (2) Along open water shorelines not adjacent to manmade canals, channels, or basins, and which
9 have been altered by the legal placement of fill, and where a mangrove fringe of at least ten
10 (10) feet in width exists, or native vegetation exists or is planted and maintained in a ten-foot
11 (10) width across the entire shoreline of the property and is placed under a grant of
12 conservation easement running in favor of the County:

- 13 a. In no event shall the total combined area of all structures occupy more than 30 percent
14 (30%) of the shoreline setback required for the principal structure.
- 15 b. Accessory structures, ~~including, but not limited to, pools, spas, and any screen~~
16 ~~enclosure over pools or spas~~, other than docks and erosion control structures shall be
17 set back a minimum of 15 feet as measured from the MHW line or the landward extent
18 of the mangroves, whichever is farther landward, and shall be located in upland areas.
19 An exception shall be made for a maximum four foot wide walkway to the shoreline or
20 docking facility. One walkway shall be permitted per 100 linear feet of shoreline.

21 (3) Along open water shorelines not adjacent to manmade canals, channels, or basins, and which
22 have been altered by the legal placement of fill, and where no mangrove fringe exists, and no
23 conservation easement of native shoreline vegetation exists pursuant to Section 118-
24 12(b)(4)b.:

- 25 a. In no event shall the total combined area of all structures occupy more than 30 percent
26 (30%) of the shoreline setback required for the principal structure.
- 27 b. Accessory structures, ~~including, but not limited to, pools, spas, and any screen~~
28 ~~enclosure over pools or spas~~, other than docks and erosion control structures, shall be
29 set back at least half the distance of the setback required for the principal structure, or
30 15 feet, whichever is greater, as measured from the MHW line, and shall be located in
31 upland areas. An exception shall be made for a maximum four foot wide walkway
32 connecting the developed area to a dock or water access structure constructed in
33 accordance with Section 118-12(m)(6).

34 (4) Along unaltered or unlawfully altered shorelines:

- 35 a. In no event shall the total combined area of all structures occupy more than 30 percent
36 (30%) of the shoreline setback required for the principal structure.
- 37 b. Accessory structures, ~~including, but not limited to, pools, spas, and any screen~~
38 ~~enclosure over pools or spas~~, other than docks and erosion control structures, shall be
39 set back a minimum of 25 feet, as measured from the MHW line or the landward extent
40 of the mangroves, whichever is farther landward, and shall be located in upland areas.

1 An exception shall be made for a maximum four foot wide walkway connecting the
2 developed area to a dock or water access structure constructed in accordance with
3 Section 118-12(m)(6).

4 (d) *Stormwater and pollutant runoff.* All structures shall be designed such that stormwater and
5 pollutant runoff is contained on site, consistent with the stormwater management standards of this
6 Land Development Code. Pools, spas, fish cleaning tables, and similar pollutant sources shall not
7 discharge directly into surface waters. Structures should be made of permeable materials, whenever
8 practical, to allow the infiltration of stormwater runoff.
9

10 (e) *Applicability of open space and bufferyard requirements.* All structures within the
11 shoreline setback shall be located such that the open space ratios for the entire parcel and all scenic
12 corridors and bufferyards are maintained.
13

14 (f) *Enclosed structures and gazebos.* No enclosed structures, other than a dock box of five
15 feet or less in height, a screened gazebo, and a screen enclosure over a pool or spa, shall be allowed
16 within the shoreline setback. Gazebos must be detached from any principal structure on the parcel.
17 No decks or habitable spaces shall be constructed on the roof of any gazebo. Any individual gazebo
18 within the shoreline setback shall not exceed 200 square feet in area and the highest portion of the
19 roof shall be no more than 12 feet above grade. Screen enclosures over pools shall not exceed 12
20 feet in height. Multiple gazebos within the shoreline setback shall be a minimum of 10 linear feet
21 from each other.
22

23 (k) *Bulkheads, seawalls, and riprap.* Bulkheads, seawalls or riprap shall be permitted, provided that:

24 (1) Bulkheads, seawalls and/or riprap may be allowed without a principal use where it is
25 demonstrated that their purpose is necessary for erosion control. Any attachments to seawalls
26 or bulkheads, such as davits, cleats, and platforms, or any other elements that constitute
27 docking facilities shall not be allowed except as accessory to a principal use. Seawalls without
28 a principal use may have a cap of ~~up to~~ no more than two feet in width ~~without being~~
29 ~~considered a dock.~~

30 ~~(+)~~(2) Existing grade landward of the bulkhead shall be six inches lower than the top of the
31 bulkhead.

32 ~~(2)~~(3) Vertical type seawalls or bulkheads shall be permitted only to stabilize severely eroding
33 shorelines and only on manmade canals, channels, or basins. Such seawalls or bulkheads
34 shall be permitted only if native vegetation and/or riprap and filter cloth is not a feasible
35 means to control erosion. No new seawalls, bulkheads, or other hardened vertical structures
36 shall be permitted on open water.

37 ~~(3)~~(4) Lawfully eExisting, deteriorated seawalls and bulkheads ~~on open water shorelines~~ may
38 be repaired and/or replaced and are exempt from the nonsubstantial improvements limitations
39 except on known or potential sea turtle nesting beaches. Repairs and/or replacements must
40 maintain the existing footprint to the maximum extent practicable.

41 ~~(4)~~(5) Whenever feasible, riprap, bulkheads, retaining walls and seawalls should be placed
42 landward of any existing mangroves or wetland vegetation. Native upland, wetland, and
43 aquatic biotic communities shall be preserved to the maximum extent possible.

1 ~~(5)~~(6) Wherever feasible, riprap shall be placed at the toe of solid seawalls to dissipate wave
2 energy and provide substrate for marine organisms.

3 ~~(6)~~(7) No seawalls, bulkheads, riprap or other shoreline hardening structures shall be permitted
4 on or waterward of any portion of any beach berm complex that is known to be or is potential
5 nesting area for marine turtles as determined by the County Biologist, the state, and/or other
6 appropriate agencies. Within known or potential nesting areas, the County Biologist may, in
7 cooperation with the Florida Department of Environmental Protection, determine that
8 specific segments of shorelines have been previously lawfully altered to such a degree that
9 suitable nesting habitat for marine turtles is no longer present. In such cases, the County
10 Biologist in cooperation with the Florida Department of Environmental Protection may
11 recommend reasonable measures to restore the nesting habitat. If such measures are not
12 feasible, the setback requirements of this subsection do not apply. Restoration of suitable
13 nesting habitat shall be required for unlawfully altered beaches.

14 ~~(7)~~(8) Beach renourishment projects on open water may be approved only upon a determination
15 by the County Biologist that the project has a valid public purpose that furthers the goals of
16 the Monroe County Comprehensive Plan.

17 ~~(8)~~(9) All such projects shall require state and/or federal permits prior to the commencement of
18 development or construction and prior to the issuance of a county 'Notice to Proceed.'

19 (m) *Docking facilities.* Docking facilities shall be permitted, provided that:

20 (1) *Permit.* All required permits from the Florida Department of Environmental Protection and
21 Army Corps of Engineers shall be obtained prior to commencement of construction and/or
22 issuance of a County permit or 'Notice to Proceed.'

23 (2) *Width.* Docks shall not exceed ten percent (10%) of the width of the waterbody as measured
24 laterally across the waterbody from the point of mean low water (MLW) of the proposed
25 location of placement, prior to construction of any dock, to the opposing point of mean low
26 water, prior to construction of any dock. The County Biologist shall use the best available
27 data to determine the point of MLW prior to construction of docks. Along open water
28 shorelines adjacent to manmade waterways where no breakwater, rip-rap, or structure(s)
29 exists along the outside of the waterway, the opposing point of mean low water shall be
30 measured as the edge of the lawfully dredged area.

31 (3) *Setback Requirements.* No vessel shall be moored or docked or otherwise secured to a
32 mooring facility in such a way that the vessel extends beyond the side property lines
33 (including the property line as extended into the water perpendicular to the shore).

34 a. Davits shall be set back from the side property lines (including the property line as
35 extended into the water perpendicular to the shore) the same distance as the required
36 principal structure setback on the property or five feet (5ft), whichever is greater, except
37 that one (1) davit support may be located within five feet (5ft) of the property line
38 provided the davit arm is designed to swing to the interior of the property.

39 b. Elevator lifts shall be set back a minimum of 7.5 feet from the side property lines
40 (including the property line as extended into the water perpendicular to the shore),
41 except that personal watercraft lifts with a maximum capacity of 1,500 pounds shall be
42 set back a minimum of five (5) feet from the side property lines (including the property
43 line as extended into the water perpendicular to the shore).

- 1 c. Floating boat lifts and vessel platforms shall be set back from the side property lines
2 (including the property line as extended into the water perpendicular to the shore) a
3 minimum of 10 feet, if installed laterally and a minimum of five (5) feet, if installed
4 perpendicular to the shoreline, so as not to create a navigational hazard.
- 5 d. 4-post hoists/cradle lifts shall be permitted on parcels that are a minimum of 70 feet
6 wide and are located on manmade waterways that are 60 feet wide or greater. 4-post
7 hoists/cradle lifts shall be set back a minimum of 7.5 feet from the side property lines
8 (including the property line as extended into the water perpendicular to the shore). 4-
9 post hoists/cradle lifts shall also be permitted on parcels located on open water
10 shorelines (not adjacent to manmade canals, channels, or basins), and if installed
11 perpendicular to the shoreline shall be set back a minimum of five (5) feet from the side
12 property lines (including the property line as extended into the water perpendicular to
13 the shore).

14 (6) *Required conditions.* Any docking facility shall meet the following conditions:

- 15 a. All pilings associated with the construction of any dock shall be non-CCA-leaching
16 (recycled plastic, concrete, greenheart) or be wrapped with impermeable plastic or PVC
17 sleeves. Impermeable plastic or PVC sleeves shall have a minimum of 30 millimeter
18 thickness and shall extend from at least 6 inches below the level of the substrate to at least
19 2 feet above the mean high water line.
- 20 ~~a.b.~~ Docking facilities that do not terminate over seagrass beds or hardbottom communities
21 must have at least four feet (4ft) of water depth at MLW at the terminal end of the docking
22 facility, and continuous access to open water. A benthic survey shall be submitted to
23 document the presence or absence of seagrass beds and/or hardbottom communities;
- 24 ~~b.c.~~ A docking facility that extends across a full ten percent of the width of any body of water
25 may terminate in water less than four feet (4ft) at MLW if this water depth occurs within
26 five horizontal feet of the terminal end of the docking facility such that the centerline of
27 an average vessel will rest in water of adequate depth, and continuous access to open
28 water is available;
- 29 ~~e.d.~~ Docking facilities may be developed on the shoreline of lots in a subdivision that was
30 approved before September 15, 1986, if the docking facility is located in a channel or
31 canal that was dredged before September 15, 1986, and if there is a MLW depth of at
32 least four feet (4ft) at the terminal end of the docking facility. Such docks shall not exceed
33 ten percent of the width of the channel or canal; and
- 34 ~~d.e.~~ Docking facilities that terminate over seagrass beds or hardbottom communities may only
35 be permitted when the water depth at the terminal platform is at least four feet (4ft) above
36 the top of all seagrasses, corals, macro algae, sponges, or other sessile organisms at MLW
37 and continuous access to open water of navigable depth is available. The height of pier
38 type docks and piers over benthic biological resources shall be a minimum of 5 feet about
39 above mean high water as measured from the top surface of the decking. A benthic survey
40 shall be submitted to document the presence or absence of seagrass beds and/or
41 hardbottom communities. A bathymetric survey shall be submitted to document the water
42 depth at the terminal end of the platform and to ensure that continuous access to open
43 water of navigable depth is available. All such projects shall require approval by the
44 Florida Department of Environmental Protection and the U.S. Army Corps of Engineers
45 prior to commencement of construction or issuance of a County 'Notice to Proceed.'

1 (13) *Marginal docks.* On shorelines landward of a seawall, revetment or manmade canal or
2 channel, a dock may run the entire length of the shoreline, parallel to the water's edge,
3 provided that:

4 a. The dock shall not exceed eight (8) feet in width waterward of the mean high water line
5 or ten percent of the width of the waterbody as required in Section 118-12(m)(2),
6 whichever is less

7 ~~a.b.~~ The landward edge of the dock is located entirely on the upland shoreline and no
8 walkway is needed to provide access to the dock;

9 ~~b.c.~~ All portions of the dock that extend over submerged lands are cantilever beam or pile
10 supported;

11 ~~e.d.~~ The dock is located so as to avoid or minimize covering or impacting wetland
12 vegetation or a mangrove fringe of more than ten (10) feet in width;

13 ~~d.e.~~ No 4-post hoists/cradle lifts shall be permitted on marginal docks located on altered
14 shorelines adjacent to manmade canals, channels, and basins, unless located in a cut-in
15 slip, or on a lot having a minimum of 70 feet of shoreline and where such manmade
16 canal, channel, or basin has a minimum width of 60 feet, as measured from MLW to
17 MLW prior to construction.

18 (14) *T-style docks.* Any dock with a walkway perpendicular to the shoreline, such as a "T" or "L"
19 dock, shall be designed as follows:

20 a. The portion of the dock parallel to the shoreline (whether floating or stationary) may
21 run the entire shoreline length of the parcel and shall not exceed eight (8) feet in width
22 or ten percent of the width of the waterbody as required in subsection (m)(2), whichever
23 is less.

24 b. The dock and walkway shall be located so as to avoid or minimize covering wetland
25 vegetation or mangroves.

26 c. The walkway connecting the dock to the shore shall not exceed four feet in width. One
27 such walkway shall be allowed for every 100 feet of shoreline length or fraction thereof
28 (for example, 75 feet of shoreline may have one walkway and 101 feet of shoreline may
29 have two).

30 d. Where a mangrove fringe of more than ten (10) feet in width or wetland vegetation
31 exists along the shoreline and a "T" or "L" style dock would extend over more than ten
32 percent of the width of the waterbody, the County Biologist will coordinate with the
33 Florida Department of Environmental Protection and the U.S. Army Corps of Engineers
34 to evaluate an alternative design. Such alternative design shall only have the minimum
35 deviations from this subsection to address this unique situation. ~~If a mangrove fringe of~~
36 ~~more than ten (10) feet in width will be removed, the dock shall not extend more than~~
37 ~~20 feet along the shoreline.~~ On shorelines exceeding 100 feet in length, one such dock
38 shall be allowed for every 100 feet of shoreline.

39 (15) *Pier type docks.* Pier type docks shall be permitted provided that:

40 a. Such structures are oriented approximately perpendicular to the shoreline;

- b. Such structures are located in an existing break in the mangroves or shoreline vegetation; however, if no such break exists, a walkway no more than four (4) feet in width, may be cut through the mangroves or shoreline vegetation;
- c. Such structures are located such that no portion of the dock (including the terminal platform and mooring facilities) is less than five (5) feet from the side property lines as extended into the water perpendicular to the shore;
- d. Such structures do not exceed four (4) feet in width, except for a terminal platform, as allowed by subsection (m)(15)f;
- e. Such structures are no longer than twice the linear shoreline frontage of the parcel or 100 feet, whichever is less. For purposes of this subsection (m)(15)e., dock length shall be measured from MLW out to the waterward extension of the dock. A special exception may be granted by the Planning and Environmental Resources Director to allow the minimum relaxation of this length restriction as is necessary to provide the upland owner with access to adequate water depths specified for docking facilities. Such special exceptions shall only be granted based on a written determination that, among other criteria, the proposed dock will not be inconsistent with community character, will not interfere with public recreational uses in or on adjacent waters, and will pose no navigational or safety hazard. At least 30 calendar days prior to the issuance of a county permit issued under such a special exception, the Planning and Environmental Resources Director shall ensure that shoreline property owners within 300 feet of the subject parcel are notified by regular mail of the proposed special exception in order to allow an opportunity for appeal; and
- f. If proposed, the terminal platform is no wider than eight (8) feet in one dimension and does not exceed a total of 160 square feet in area. The terminal platform shall be constructed of grated materials to allow the maximum amount of sunlight infiltration to the water under the platform. The terminal platform may include stairways for swimming access, provided that all stairways are contained within the square footage allowed for the terminal platform. The terminal platform may include a non-enclosed gazebo that does not exceed 100 square feet in area and the highest portion of the roof shall be no more than 12 feet above the decking or terminal platform level.

(n) *Water access structures.* The following specific types of structures, or portions thereof, extending over mangroves, wetlands, or submerged lands, shall be permitted only on shorelines of water bodies other than manmade canals, channels, and basins. All required permits from the Florida Department of Environmental Protection and the Army Corps of Engineers shall be obtained prior to commencement of construction or issuance of a County ‘Notice to Proceed.’

(1) *Water access walkways.* Water access walkways shall be permitted provided that such structures are:

- a. Oriented approximately perpendicular to the shoreline;
- b. Designed to terminate in water no deeper than twelve (12) inches at MLW or extend farther than ten feet from the waterward extent of mangroves;
- c. Designed so that the decking is elevated at least two (2) feet above MHW, except for a ramp or stair section at the waterward end which must be limited to no more than ten (10) foot long;

- d. Do not exceed four (4) feet in width and do not include a terminal platform or gazebo or roof structures;
- e. Designated by signs of at least one square foot each to be placed on each side of the structure that states "No Mooring of Motorized Vessels Allowed"; and
- f. Designed not to terminate over seagrasses or hardbottom communities.

(2) *Water observation platforms.* Water observations platforms shall be permitted provided that such structures are:

- a. Oriented approximately perpendicular to the shoreline;
- b. Designed to terminate in water no deeper than six (6) inches at MLW or begin the terminal platform no farther than ten (10) feet beyond the waterward extent of mangroves;
- c. Designed so that the top of the decking, including the terminal platform, must be elevated at least five (5) feet above MHW, except for a ladder or steps that may be added for swimming access only in the absence of seagrasses or hardbottom communities;
- d. Designed with a terminal platform that does not exceed 160 square feet, inclusive of any steps or ladder. The terminal platform shall be constructed of grated materials to allow the maximum amount of sunlight infiltration to the water under the platform. The terminal platform may include a non-enclosed gazebo that does not exceed 100 square feet in area and the highest portion of the roof shall be no more than 12 feet above the decking or terminal platform level; and
- e. Shall be designed with handrails and designated by signs of at least one square foot each to be placed on each side of the structure that states "No Mooring of Motorized Vessels Allowed."

(o) *Special approvals.*

(1) For accessory structures serving commercial uses, public uses, or more than three dwelling units, the Planning and Environmental Resources Director or the Planning Commission may approve deviations from the requirements of the subsection above as part of a minor or major conditional use permit. Such approval may include additional structures or uses, provided that such approval is consistent with any permitted uses, densities, and intensities of the land use (zoning) district, furthers the purposes of this Section, is consistent with the general standards applicable to all uses, and the proposed structures are located in a disturbed area of an altered shoreline. Such additional uses are limited to waterfront dining areas, pedestrian walkways, public monuments or statues, informational kiosks, fuel or septic facilities, and water-dependent marina uses. Any such development shall make adequate provision for a water quality monitoring program for a period of five (5) years after the completion of the development.

(2) For accessory structures serving three or fewer dwelling units the Planning and Environmental Resources Director may approve designs that address unique circumstances such as odd shaped lots or shorelines, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the Planning Director's written concurrence with the applicant's written finding that the proposed design furthers the purpose

1 of this Section and the goals of the Monroe County Comprehensive Plan. Only the minimum
2 possible deviation from the above standards will be allowed in order to address the unique
3 circumstances. No such special approval will be available for after-the-fact permits submitted
4 to remedy a code enforcement violation.

5 (3) Docks or docking facilities lawfully existing along the shoreline of manmade canals,
6 channels, or basins, or serving three or fewer dwelling units on any shoreline, may be
7 expanded or extended beyond the size limitations contained in this Section in order to reach
8 the water depths specified for docking facilities. Any such modifications shall comply with
9 each and every other requirement of this Section and Section 118-10(d).

10
11 (4) All principal structures lawfully existing within the shoreline setback along manmade canals,
12 channels, or basins, on parcels less than 4,000 square feet, may be rebuilt in the same
13 footprint, provided that there will be no expansion of the footprint within ten (10) feet of the
14 MHW line and there will be no adverse impacts on stormwater runoff, navigation or turtle
15 nesting habitat.

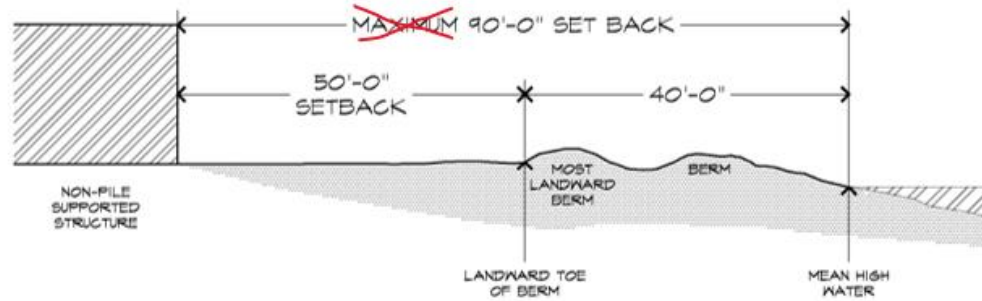
16 (5) In licensed RV parks adjacent to manmade canals, channels, or basins, road ready vehicles
17 may be parked no closer than ten (10) feet from the MHW line, provided that:

- 18 a. No previously approved site plan has established shoreline setbacks greater than ten
19 (10) feet from MHW for RV parking;
- 20 b. The total combined area of all structures, principal and accessory, does not occupy more
21 than 60 percent of the upland area of the required 20-foot shoreline setback;
- 22 c. Shoreline vegetation is protected and any required district boundary bufferyards are
23 provided;
- 24 d. Open space ratios are maintained; and
- 25 e. Stormwater runoff from the entire site is managed onsite using best management
26 practices.

27
28 (p) *Requirements for marine turtle nesting areas.* Notwithstanding the provisions of subsection (o) of
29 this Section, no development other than pile-supported docks and walkways designed to minimize
30 adverse impacts on marine turtles shall be allowed within 50 feet of any portion of any beach berm
31 complex that is known to be or is a potential nesting area for marine turtles. Beaches known to
32 serve as nesting areas for marine turtles are those areas documented as such on the County's
33 threatened and endangered species maps and any areas for which nesting or nesting attempts
34 ("crawls") have been otherwise documented. Any development shall comply with Sections 12-114
35 through 12-120.

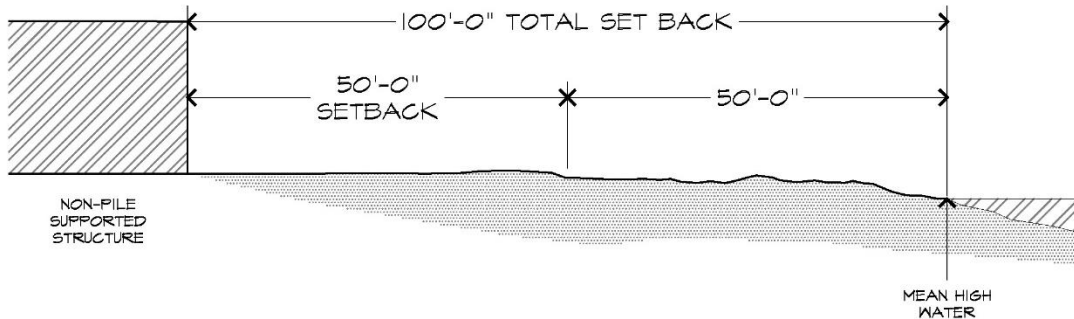
36 (1) The 50-foot setback shall be measured from either the landward toe of the most landward
37 beach berm or from 50 feet landward of MHW, whichever is less. The maximum total setback
38 shall be 100 feet from MHW.

BEACH AREA WITH BERMS



1

BEACH AREA WITHOUT BERMS



2

- 3 (2) Within known or potential nesting areas for marine turtles, as determined by the County
4 Biologist, the state, and/or other appropriate agencies, the County Biologist may, in
5 cooperation with other appropriate agencies, determine [in writing](#) that specific segments of
6 shorelines have been previously lawfully altered to such a degree that suitable nesting habitat
7 for marine turtles is no longer present. In such cases, the County Biologist in cooperation
8 with the Florida Department of Environmental Protection may recommend reasonable
9 measures to restore the nesting habitat. If such measures are not feasible, the specific
10 requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be
11 required for unlawfully altered beaches.

12

13

14

IV. CONSISTENCY WITH THE MONROE COUNTY LAND DEVELOPMENT CODE

15

16 The proposed amendment is consistent with one or more of the required provisions of LDC Section 102-
17 158(d)(7)(b):

18

1 1. Changed projections (e.g., regarding public service needs) from those on which the text or
2 boundary was based;

3 N/A
4

5 2. Changed assumptions (e.g., regarding demographic trends);

6 N/A
7

8 3. Data errors, including errors in mapping, vegetative types and natural features described in
9 volume 1 of the plan;

10 N/A
11

12 4. New issues;

13 N/A
14

15 5. Recognition of a need for additional detail or comprehensiveness; or

16 The proposed amendments eliminate redundant or obsolete text, refine code language to better
17 clarify regulatory intent for the benefit of the regulated community and county staff and to
18 strengthen environmental protection in certain areas.
19

20
21 6. Data updates;

22 N/A
23
24

25 **V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE**
26 **PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.**

27
28 **A. The proposed amendment is consistent with the Goals, Objectives and Policies of the Monroe**
29 **County 2030 Comprehensive Plan. Specifically, it furthers:**

30
31 **Policy 202.4.1**

32 Monroe County shall support state and federal policies and regulations concerning the
33 permitting of dredge and fill activity, except in those instances where more stringent
34 regulations adopted by Monroe County shall be maintained. [§163.3177(6)d.2.b., F.S.;
35 §163.3177(6)d.2.e., F.S.]
36

37 **Policy 203.1.1**

38 The open space requirement for mangrove wetlands shall be one hundred (100) percent.
39 No fill or structures shall be permitted in mangrove wetlands except for elevated, pile-
40 supported walkways, docks, piers and utility pilings. [§163.3177(6)d.2.d., F.S.;
41 §163.3177(6)d.2.e., F.S.; §163.3177(6)d.2.j., F.S.]
42

43 **Policy 203.1.2**

44 Monroe County shall require minimum vegetated setbacks of fifty (50) feet to be
45 maintained as an open space buffer for development occurring adjacent to all types of
46 wetlands except for tidally inundated mangrove fringes and as provided for in Policy
47 204.2.3, 204.2.4 and 204.2.5. If a 50-foot setback results in less than 2,000 square feet

1 of principal structure footprint of reasonable configuration, then the setback may be
2 reduced to allow for 2,000 square feet of principal structure footprint of reasonable
3 configuration, provided that the setback is not reduced to less than twenty-five (25) feet.
4 On properties classified as scarified adjacent to wetlands, the wetland setback may be
5 reduced to twenty-five (25) feet, without regard to buildable area, if the entire setback is
6 managed in accordance with County regulations approved by the County Biologist and is
7 placed under conservation easement. [§163.3177(6)d.2.d., F.S.; §163.3177(6)d.2.e., F.S.;
8 §163.3177(6)d.2.j., F.S.]
9

10 **Policy 203.3.2**

11 Monroe County shall continue to protect, preserve, and enhance the coral reefs and other
12 hardbottom communities through its land development regulations which address water
13 quality (See Conservation and Coastal Management Element Goal 202 and related
14 objectives and policies), including efforts to:

- 15 1. limit the location of water-dependent activities to locations that will not have a
16 significant adverse impact on the offshore resources of hard coral bottoms and other
17 hardbottom communities;
- 18 2. control and regulate land and water activities in the vicinity of coral and other
19 hardbottom communities as identified in the Florida Keys Coastal Management Study
20 in an effort to arrest further deterioration; and
- 21 3. include the strategies identified in the Florida Keys National Marine Sanctuary
22 Revised Management Plan. [§163.3177(6)d.2.d., F.S.; §163.3177(6)d.2.e., F.S.;
23 §163.3177(6)d.2.f., F.S.]
24

25 **Policy 203.5.1**

26 Monroe County shall maintain criteria for marina siting which shall meet or exceed state
27 standards. (See Objective 212.3 and related policies.) [§163.3177(6)d.2.b., F.S.;
28 §163.3177(6)d.2.e., F.S.; §163.3177(6)d.2.i., F.S.]
29

30 **Policy 203.5.2**

31 Monroe County shall maintain a plan for mooring buoy sites, including:

- 32 1. live-aboard mooring sites (See Policy 202.3.4); and
- 33 2. short-term recreational mooring sites.
34
35

36
37 Identification of mooring sites shall be undertaken in coordination with NOAA and
38 FDEP, and shall be consistent with recommendations of the Florida Keys National
39 Marine Sanctuary Management Plan. [§163.3177(6)d.2.b., F.S.; §163.3177(6)d.2.e.,
40 F.S.; §163.3177(6)d.2.i., F.S.]
41

42 **Policy 204.2.1**

43 Monroe County shall utilize the Wetlands Evaluation Procedure (KEYWEP) to determine
44 the functional capacity of wetlands and Uniform Mitigation Assessment Method
45 (UMAM) to determine mitigation requirements for impacts to wetlands.
46 [§163.3177(6)d.2.j., F.S.; §163.3177(6)d.2.k., F.S.]
47
48

1 **Policy 204.2.2**

2 To protect submerged lands and wetlands, the open space requirement shall be 100
3 percent of the following types of wetlands:

- 4 1. submerged lands;
5 2. mangroves;
6 3. salt ponds;
7 4. freshwater wetlands;
8 5. freshwater ponds; and
9 6. undisturbed salt marsh and buttonwood wetlands.

10
11 Allocated density (dwelling units per acre) shall be assigned to freshwater wetlands and
12 undisturbed salt marsh and buttonwood wetland only for use as transferable development
13 rights away from these habitats. Submerged lands, salt ponds, freshwater ponds and
14 mangroves shall not be assigned any density or intensity. Within one (1) year after the
15 adoption of the 2030 Comprehensive Plan, the County shall revise the LDC to include a
16 prohibition of development in salt ponds. [§163.3177(6)d.2.j., F.S.; §163.3177(6)d.2.k.,
17 F.S.]

18
19 **Policy 204.2.3**

20 No structures shall be permitted in submerged lands, mangroves, salt ponds, or wetlands,
21 except for elevated, pile-supported walkways, docks, piers, and utility pilings. No fill
22 shall be permitted in submerged lands, mangroves, salt ponds, or wetlands except;

- 23
24 1. as specifically allowed by Objective 212.5 and subsequent Policies;
25
26 2. to fill a manmade excavated water body, such as a canal, boat ramp, or swimming
27 pool if the Director of Environmental Resources determines that such filling will not
28 have a significant adverse impact on marine or wetland communities; or
29
30 3. as needed for shoreline stabilization or beach renourishment projects with a valid
31 public purpose that furthers the goals of the Monroe County Comprehensive Plan, as
32 determined by the County.

33
34 **Policy 204.2.4**

35 No fill or structures shall be permitted in mangroves or wetlands except as allowed by
36 Policy 204.2.3 (as amended) and for bridges extending over mangroves or wetlands that
37 are required to provide automobile or pedestrian access to dwelling units located on
38 upland areas within the same property for which there is no alternative means of access.
39 Such bridges shall be elevated on pilings such that the natural movement of water,
40 including volume, rate, and direction of flow shall not be disrupted or altered. Upland
41 areas shall include disturbed wetlands that have been lawfully converted into uplands
42 through filling. [§163.3177(6)d.2.j., F.S.; §163.3177(6)d.2.k., F.S.]

43
44 **Policy 205.2.13**

45 Monroe County shall require, in the Land Development Code, an Existing Conditions
46 Report including a vegetation survey for any development that may disturb native upland
47 vegetation. At a minimum the report shall include an analysis of the potential impacts of

1 the proposed development on native upland habitats, a description of the measures
2 designed to reduce identified adverse impacts including clustering.
3

4 **Policy 212.2.1**

5 Within one (1) year after the adoption of the 2030 Comprehensive Plan, Monroe County
6 shall evaluate the minimum shoreline setbacks currently in use in Monroe County in
7 coordination with DEO, FDEP and FWC. Setbacks shall be identified which will
8 accomplish the following:
9

- 10 1. protect natural shoreline vegetation;
- 11 2. protect marine turtle nesting beaches;
- 12 3. protect water quality
- 13 4. protect structures from the effects of long-term sea level rise;
- 14 5. protect beaches and shorelines from erosion; and
- 15 6. allow redevelopment of existing waterfront commercial structures consistent with the
16 existing community character and preserve overwater views.
17

18 **Policy 212.2.2**

19 Within one (1) year after completion of the evaluation in Policy 212.2.1, the existing
20 setbacks in the Land Development Code may be revised as deemed appropriate based
21 upon findings of this review. The setbacks currently in use may be relaxed only through
22 the Special Approval process in Policy 212.2.4. Existing setbacks are as follows:
23

- 24 1. twenty (20) feet from the mean high water (MHW) line of manmade water bodies
25 and/or lawfully altered shorelines of natural water bodies;
- 26 2. fifty (50) feet from natural water bodies with unaltered shorelines or unlawfully
27 altered shorelines, measured from the landward limit of mangroves, if any, and where
28 mangroves do not exist, from the mean high water (MHW) line; and
- 29 3. fifty (50) feet from any shoreline area which is known to serve as an active nesting or
30 resting area for marine turtles, crocodiles, terns, gulls and other birds.
31 [§163.3178(2)(g), F.S.]
32

33 **Policy 212.2.3**

34 The definitions for the terms "altered shoreline" and "unaltered shoreline" are as follows:

- 35 1. altered shorelines are generally located directly along dredged canals, basins and
36 channels and/or have been filled or vertically bulkheaded to such a degree that the
37 original natural slope landward of the water is no longer present.
- 38 2. unaltered shorelines are generally located along natural non-dredged waterways and
39 open water and have a sloping profile typical of the original natural conditions of the
40 shoreline even though fill or riprap may be present.
41

42 **Policy 212.2.4**

43 Permitted uses and performance standards within the shoreline setback shall be as
44 follows:
45

46 Except as provided herein, principal structures shall be set back as follows:
47

1. Along lawfully altered shorelines including manmade canals, channels, and basins, principal structures shall be set back at least twenty (20) feet as measured from the mean high water (MHW) line;
2. Along lawfully altered shorelines including manmade canals, channels, and basins, for parcels less than 4,000 square feet that are developed with a lawfully established principal use, the required setback may be reduced to a minimum of ten (10) feet provided that the structure is sited so as to protect community character and minimize environmental impacts by maintaining open space and protecting shoreline vegetation.
3. Along open water shorelines not adjacent to manmade canals, channels, or basins, and which have been altered by the legal placement of fill:
 - a. Where a mangrove fringe of at least ten (10) feet in width occurs across the entire shoreline of the property, principal structures shall be set back at least thirty (30) feet as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further inland.
 - b. Where no mangrove fringe exists, principal structures shall be set back at least thirty (30) feet from the mean high water (MHW) line, provided that native vegetation exists or is planted and maintained in a ten (10) foot width across the entire shoreline as approved by the County Biologist, and is placed under conservation easement; otherwise the setback shall be fifty (50) feet as measured from the mean high water (MHW) line.
 - c. On infill lots surrounded by significant development where principal structures are set back less than fifty (50) feet from mean high water (MHW) or the landward extent of mangroves, the Director of Planning and Environmental Resources may evaluate the community character, the presence or absence of environmental features, and the setbacks on adjacent developed properties within two parcels on either side of proposed development, and may allow principal structures to be set back as far as practicable or in line with adjacent principal structures. In no event shall the setback be less than twenty (20) feet. On shorelines where the existing pattern of setback is greater than thirty (30) feet, the greater setback shall apply.
4. Along unaltered and unlawfully altered shorelines, principal structures shall be set back fifty (50) feet as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further landward;

Accessory structures within the shoreline setback shall be designed to meet the following criteria:

1. Along altered shorelines, including manmade canals, channels, and basins:
 - a. In no event shall the total, combined area of all structures occupy more than sixty (60) percent of the upland area of the shoreline setback;
 - b. Accessory structures, including, pools and spas shall be set back a minimum of ten (10) feet, as measured from the mean high water (MHW) line;

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2. Along open water shorelines which have been altered by the legal placement of fill, and where a mangrove fringe of at least ten (10) feet in width occurs across the entire shoreline of the property:
 - a. In no event shall the total, combined area of all structures occupy more than thirty (30) percent of the upland area of the shoreline setback;
 - b. Accessory structures other than docks and erosion control structures shall be set back a minimum of fifteen (15) feet, as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further landward;
3. Along unaltered shorelines:
 - a. In no event shall the total, combined area of all structures occupy more than thirty (30) percent of the upland area of the shoreline setback;
 - b. Accessory structures other than docks and erosion control structures shall be set back a minimum of twenty-five (25) feet, as measured from the mean high water (MHW) line or the landward extent of the mangroves, whichever is further landward;
4. Any proposed development within the shoreline setback shall include a site-suitable stormwater management plan for the entire developed parcel which meets the requirements of the land development regulations;
5. All structures within the shoreline setback shall be located such that the open space ratios for the entire parcel and all scenic corridors and bufferyards are maintained;
6. Structures shall be located in existing cleared areas before encroaching into native vegetation. The remaining upland area of the shoreline setback shall be maintained as native vegetation or landscaped areas that allow infiltration of stormwater runoff;
7. Side yard setbacks must be maintained for all structures in the shoreline setback except for docks, sea walls, fences, retaining walls, and boat shelters over existing boat ramps;
8. No enclosed structures, other than a dock box of five (5) feet in height or less, a screened gazebo, and a screen enclosure over a pool or spa, shall be allowed within the shoreline setback. Gazebos must be detached from any principal structure on the parcel. No decks or habitable spaces may be constructed on the roof of any gazebo in the shoreline setback;
9. Pools, spas, fish cleaning tables, and similar pollutant sources may not discharge directly into surface waters. Where no runoff control structures are present, berms and vegetation shall be used to control runoff. Native vegetation shall not be removed to install berms or runoff control structures;
10. All boat ramps shall be confined to existing scarified shoreline areas of manmade canals, channels, and basins with little or no native vegetation, and shall be located

1 and designed so as not to create a nonconformity for other structures set back from
2 the new mean high water (MHW) line created by the boat ramp; and
3

4 11. The roof and supporting members of a boat shelter constructed in compliance with
5 Section 118-10 of the Land Development Code, as amended (hereby incorporated
6 by reference), may extend two (2) feet into the shoreline setback around the
7 perimeter of a boat basin or ramp. This area shall be subtracted from the total area
8 allowed for all structures within the shoreline setback.
9

10 12. Shoreline structures shall be designed to protect tidal flushing and circulation
11 patterns. Any project that may produce changes in circulation patterns shall be
12 approved only after sufficient hydrographic information is available to allow an
13 accurate evaluation of the possible impacts of the project. Previously existing
14 manmade alterations shall be evaluated so as to determine whether more
15 hydrological benefits will accrue through their removal as part of the project.
16

17 13. No development other than pile supported docks and walkways designed to
18 minimize adverse impacts on marine turtles shall be allowed within fifty (50) feet of
19 any portion of any beach berm complex which is known to serve as a nesting area
20 for marine turtles:
21

22 a. The fifty (50) foot setback shall be measured from either the landward toe of the
23 most landward beach berm or from fifty (50) feet landward of MHW, whichever is
24 less. The maximum total setback will be one hundred (100) feet from MHW.
25

26 b. Structures designed to minimize adverse impacts on marine turtles shall have a
27 minimum horizontal distance of four (4) feet between pilings or other upright
28 members and a minimum clearance of two (2) feet above grade. The entire
29 structure must be designed to allow crawling turtles to pass underneath it moving
30 only in a forward direction. Stairs or ramps with less than the minimum two (2)
31 feet clearance above grade are discouraged. If built, these portions of the structure
32 shall be enclosed with vertical or horizontal barriers no more than two (2) inches
33 apart, to prevent the entrapment of crawling turtles.
34

35 c. Beaches known to serve as nesting areas for marine turtles are those areas
36 documented as such on the County's threatened and endangered species maps and
37 any areas for which nesting or nesting attempts ("crawls") have been otherwise
38 documented. Within mapped nesting areas, the Director of Planning and
39 Environmental Resources may, in cooperation with FDEP, determine that specific
40 segments of shoreline have been previously, lawfully altered to such a degree that
41 suitable nesting habitat for marine turtles is no longer present. In such cases, the
42 Director may recommend reasonable measures to restore the nesting habitat. If
43 such measures are not feasible, the Director will waive the setback requirements of
44 this paragraph. Restoration of suitable nesting habitat may be required for
45 unlawfully altered beaches.
46

47 14. Special Approvals:
48

- 1 a. For structures serving commercial uses, public uses, or more than three dwelling
2 units, the Planning Commission may approve deviations from the above standards
3 as a major or minor conditional use. Such approval may include additional
4 structures or uses provided that such approval is consistent with any permitted uses,
5 densities, and intensities of the land use district, furthers the purposes of this
6 section, is consistent with the general standards applicable to all uses, and the
7 proposed structures are located in a disturbed area of an altered shoreline. Such
8 additional uses are limited to waterfront dining areas, pedestrian walkways, public
9 monuments or statues, informational kiosks, fuel or septic facilities, and water-
10 dependent marina uses. Any such development shall make adequate provision for
11 a water quality monitoring program for a period of five (5) years after the
12 completion of the development.
- 13 b. For structures serving three or fewer dwelling units, the Director of Planning and
14 Environmental Resources may approve designs that address unique circumstances
15 such as odd shaped lots, even if such designs are inconsistent with the above
16 standards. Such approval may be granted only upon the Director's written
17 concurrence with the applicant's written finding that the proposed design furthers
18 the purpose of this section and the goals of the Monroe County Comprehensive
19 Plan. Only the minimum possible deviation from the above standards will be
20 allowed in order to address the unique circumstances. No such special approval
21 will be available for after-the-fact permits submitted to remedy a Code Enforcement
22 violation.
- 23 c. All structures lawfully existing within the shoreline setback along manmade canals,
24 channels, or basins, or serving three or fewer dwelling units on any shoreline, may
25 be rebuilt in the same footprint provided that there will be no adverse impacts on
26 stormwater runoff or navigation.
- 27 d. Docks or docking facilities lawfully existing along the shoreline of manmade
28 canals, channels, or basins, or serving three or fewer dwelling units on any
29 shoreline, may be expanded or extended beyond the size limitations contained in
30 this section in order to reach the water depths specified for docking facilities in
31 Policy 212.4.2. Any dock or docking facility so enlarged must comply with each
32 and every other requirement of this Policy and Section 118-12 of the Land
33 Development Code, as amended (hereby incorporated by reference).
34 [§163.3178(2)(g), F.S.]
35
36

37 **B. The amendment is consistent with the Principles for Guiding Development for the Florida Keys**
38 **Area, Section 380.0552(7), Florida Statutes.**
39

40 For the purposes of reviewing consistency of the adopted plan or any amendments to that plan with the
41 principles for guiding development and any amendments to the principles, the principles shall be construed
42 as a whole and no specific provision shall be construed or applied in isolation from the other provisions.
43

- 44 (a) Strengthening local government capabilities for managing land use and development so that local
45 government is able to achieve these objectives without continuing the area of critical state concern
46 designation.
- 47 (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations, seagrass beds,
48 wetlands, fish and wildlife, and their habitat.

- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
- (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
- (g) Protecting the historical heritage of the Florida Keys.
- (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - 1. The Florida Keys Aqueduct and water supply facilities;
 - 2. Sewage collection, treatment, and disposal facilities;
 - 3. Solid waste treatment, collection, and disposal facilities;
 - 4. Key West Naval Air Station and other military facilities;
 - 5. Transportation facilities;
 - 6. Federal parks, wildlife refuges, and marine sanctuaries;
 - 7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 - 8. City electric service and the Florida Keys Electric Co-op; and
 - 9. Other utilities, as appropriate.
- (i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.
- (j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(1) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
- (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
- (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
- (m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.
- (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute (F.S.). Specifically, the amendment furthers:

163.3202 Land development regulations.—

- (1) Within 1 year after submission of its comprehensive plan or revised comprehensive plan for review pursuant to s. 163.3191, each county and each municipality shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.

1 **VI. PROCESS**

2
3 Land Development Code Amendments may be proposed by the Board of County Commissioners, the
4 Planning Commission, the Director of Planning, private application, or the owner or other person having
5 a contractual interest in property to be affected by a proposed amendment. The Director of Planning
6 shall review and process applications as they are received and pass them onto the Development Review
7 Committee and the Planning Commission.

8
9 The Planning Commission shall hold at least one public hearing. The Planning Commission shall review
10 the application, the reports and recommendations of the Department of Planning & Environmental
11 Resources and the Development Review Committee and the testimony given at the public hearing. The
12 Planning Commission shall submit its recommendations and findings to the Board of County
13 Commissioners (BOCC). The BOCC holds a public hearing to consider the adoption of the proposed
14 amendment, and considers the staff report, staff recommendation, Planning Commission
15 recommendation and the testimony given at the public hearing. The BOCC may adopt the proposed
16 amendment based on one or more of the factors established in LDC Section 102-158(d)(7).

17
18 In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited
19 uses within a zoning category, the board of county commissioners shall hold two (2) advertised public
20 hearings on the proposed ordinance.

21 **VII. STAFF RECOMMENDATION**

22
23 Staff recommends approval of the proposed amendments.
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25
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27
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29