



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Development Review Committee and
Emily Schemper, AICP, CFM, Senior Director of Planning & Environmental Resources

From: Cheryl Cioffari, AICP, Assistant Director of Planning

Date: January 10, 2022

Subject: An ordinance by the Monroe County Board of County Commissioners amending Monroe County Land Development Code to amend Section 130-141 to create the Ocean Reef Overlay District and establish a purpose and intent, boundary, exemptions for nonconforming uses and structures, exemptions from development standards established within Chapter 114, and modifications to setbacks for accessory structures as proposed by Smith/Hawks PL on behalf of Ocean Reef Club, Inc. (File 2019-025)

Meeting: January 25, 2022

I. REQUEST

On February 19, 2019, the Planning and Environmental Resources Department received an application from Barton W. Smith of Smith/Hawks PL (the “Agent”) on behalf of Ocean Reef Club, Inc. (the “Applicant,”) to amend Monroe County Land Development Code (LDC) to amend Section 130-141 to create the Ocean Reef Overlay District and establish a purpose and intent, boundary, exemptions for nonconforming uses and structures, exemptions from development standards established within Chapter 114, and modifications to setbacks for accessory structures.

On June 5, 2020, the Agent submitted a revised application (the “Application”), revising the language of the proposed LDC text amendment. The Agent states: “The Text Amendment provides text for Section 130-141 (“Amendment”) to the Monroe County Land Development Regulations (“LDR”) by creating the Ocean Reef Overlay District (“Overlay”). The Amendment amends the development standards and other provisions contained in the LDR in order to allow the development of structures or buildings that fit the architectural design and community character of Ocean Reef Club”.

On October 19, 2021, the Applicant submitted revisions to the application, replacing the previously submitted amendment language, data and analysis. The revised application for File 2019-025 establishes to propose the Ocean Reef Overlay District.

II. BACKGROUND INFORMATION

In 1977, the Monroe County Zoning Board approved the “overall conception of the Master Plan of Ocean Reef” as a major development project in accordance with Ordinance No. 21-75. This approval was memorialized by an unnumbered resolution dated August 25, 1977.

In 1997, the Master Plan for Ocean Reef was vested under Monroe County Board of County Commissioners (“BOCC”) Resolution No. 70-1997. The Master Plan for Ocean Reef was formerly vested under BOCC Resolution Nos. 478-1988 and 539-1988.

Concept Meeting

In accordance with LDC Section 102-159(b)(1), a concept meeting was held on April 1, 2019 to discuss proposed LDC text amendment. It was determined that the proposed text amendment will **not** have a county-wide impact because the proposed amendment is limited to Ocean Reef.

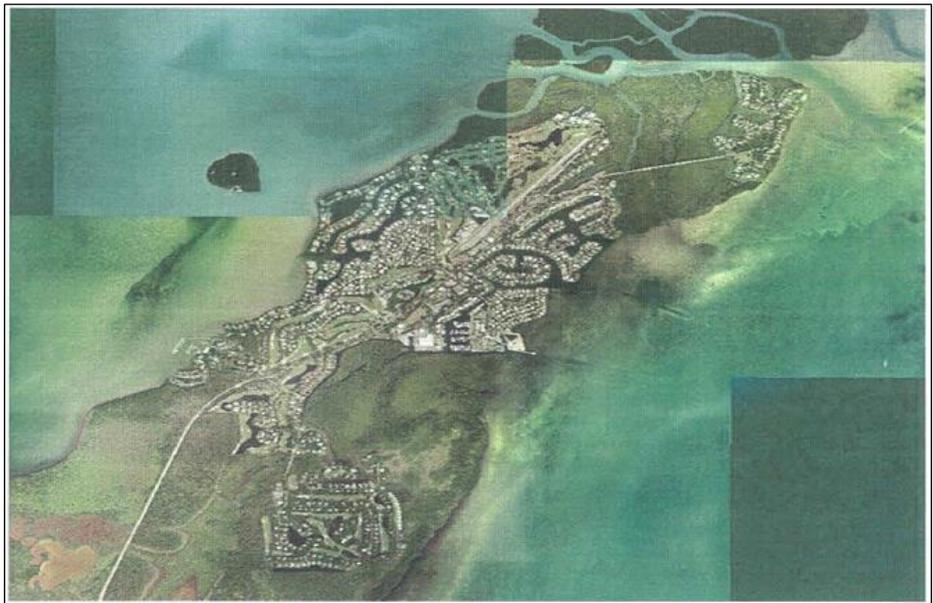
Community Meeting and Public Participation

A community meeting is not required for this application [Ref. LDC Section 102-159(b)(3)].

Development Review Committee and Public Input

At a regular meeting held on January 25, 2022, the Development Review Committee (DRC) considered the proposed Land Development text amendment, and provided for public comment.

In the application materials, the Applicant states that the reason for the proposed amendments is: *“Ocean Reef Community is a gated, master planned community developed prior to the adoption of the Monroe County Code of Ordinances in 1986 and its Comprehensive Plan (“Comp. Plan”) in 1992. Ocean Reef Community’s development as a separate and distinct master planned community is unique to the Florida Keys as it is over*



*100 acres in size and is located approximately ten miles north of the Overseas Highway, just North of Card Sound Road. All twenty-six (26) Ocean Reef Club Properties included in the Ocean Reef Overlay are geographically located within the Ocean Reef Community. The aerial below shows the isolation of Ocean Reef to the rest of the Florida Keys as all development shown in the photo is within the community and there are no neighboring communities. Additionally, a marked-up map of the Ocean Reef Community, attached hereto as **Exhibit B**, identifies the Ocean Reef Club Properties included in the Ocean Reef Overlay.*

Ocean Reef Club is a member of the Ocean Reef Community Association, Inc., which was incorporated in 1959 under the name Ocean Reef Improvement Association, which name was subsequently amended to Ocean Reef Community Association, Inc.

Monroe County and the State of Florida have already recognized Ocean Reef Community as unique in its development and location and has already excluded the community from multiple provisions of the County's Comp. Plan and Code, including but not limited to the County's Rate of Growth Ordinance (ROGO) and conditional use approval process."

The Applicant's full explanation and justification of the proposed amendments is included in the file for the application (File 2019-025).

III. APPLICANT'S PROPOSED LAND DEVELOPMENT CODE PLAN TEXT AMENDMENTS

The Applicant's proposed text, as October 19, 2021¹, is shown as follows: additions are in underlined, deletions are ~~stricken through~~.

Chapter 130 – LAND USE DISTRICTS

ARTICLE IV. - OVERLAY DISTRICTS

Sec. 130-141. Ocean Reef Overlay District

- (a) **Purpose and Intent.** The purposes of the Ocean Reef Overlay District are to implement applicable goals, objectives, and policies of the Comprehensive Plan established under Goal 112 and to allow development that primarily serves the needs of the permanent residents of the Ocean Reef master planned community a gated 100+ acre master planned community.

The intent is to protect and maintain the character of Ocean Reef Club, Inc. and the Ocean Reef master planned community by establishing specific standards, exemptions and reductions for the Ocean Reef master planned community which self-regulates development standards and monitors development requests by its members.

- (b) **Boundary.** The Ocean Reef Overlay District shall be shown as an Overlay district on the Official Land Use District (zoning) map.

- (c) **Applicability.** In order for a property owner to utilize the standards, exemptions and reductions conferred within the Ocean Reef Overlay District, an amendment to the Official Land Use District (Zoning) Map shall be required and such overlay shall be shown on the Official Land Use District (Zoning) Map.

- (d) **NONRESIDENTIAL DEVELOPMENT STANDARDS AS PROVIDED IN POLICY 112.1.1.**

1. Nonconforming Structures and Uses.

- a. Lawfully established nonconforming nonresidential principal and accessory structures and uses located within the Ocean Reef Overlay that are destroyed, substantially damaged or substantially improved may be repaired, restored and/or replaced, even if 100 percent destroyed, provided that they are rebuilt to preexisting use and that the nonconformity is not expanded or further violated.

¹ The Applicant originally submitted an application for a text amendment to the Comprehensive Plan with language to revise the Land Development Code on February 19, 2019. The submission received on June 8, 2020 included an application to amend the Land Development Code and revised language for consideration with final revisions submitted on October 21, 2021.

- b. Accessory uses or structures associated with a lawfully established nonconforming nonresidential principal use may be permitted.
 - c. A nonconforming nonresidential accessory use or structure may continue if its principal use or structure is destroyed, substantially damaged, or substantially improved, discontinued, removed, for redevelopment, provided that the owner is moving forward with redevelopment of a principal use or structure. with active concurrent permits for redevelopment of a principal use or structure without expansion. In the absence of an active concurrent permit for redevelopment of a principal use or structure on the site, the accessory structure and use may remain for up to five years from the date of a disaster event. The Board of County Commissioners may extend the five- year time limit by resolution, if needed.
- 2. Open Space.** Lawfully established nonresidential structures and uses may be repaired, restored and/or replaced using the previously approved open space ratio, provided stormwater management are in compliance with LDC Section 114-2(5):
 - a. Lawfully existing nonresidential principal structures and uses, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the maximum shoreline setback is maintained.
 - b. Lawfully existing nonresidential accessory structures and uses, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the shoreline setback is consistent with subsection 7 of this Section.
 - c. New nonresidential principal and accessory structures development shall have an open space requirement of five percent (5%), provided the clearing limits in Policy 101.5.27 are not exceeded and development is not proposed within a wetland area identified in Policies 102.1.1 or 204.2.2.
- 3. Variances.** Nonresidential structures may receive variances for front, side, and rear yard non-shoreline setbacks; bufferyards; off-street parking; loading spaces; landscaping, as approved by the Ocean Reef master planned community. Variances for nonresidential structures on property owned by Ocean Reef Club, Inc. shall not be required to provide evidence it has been approved by the Ocean Reef master planned community, based on its exemption from master planned community review under the Ocean Reef gated master planned community's governing documents. The County shall recognize these variances, upon evidence submitted that a variance has been approved by the Ocean Reef master planned community or Ocean Reef Club based on criteria established for granting a variance by the Ocean Reef master planned community.
- 4. Stormwater.** The specific standards, exemptions and reductions shall govern Nonresidential structures and uses within Ocean Reef master planned community provided stormwater facilities adhere to the 25-year, 72-hour South Florida Water Management District Standard, and eliminate off-property discharges and demonstrate that post development total nitrogen and total phosphorous loads are less than pre-development loads to the receiving water body (net improvement) or demonstrate a ninety five percent (95%) reduction in stormwater total nitrogen load and total phosphorus load. Treatment and disposal facilities must be designed and operated so that off-site discharges meet State water quality standards.
- 5. Development Standards.**
 - a. Nonresidential structures and uses within Ocean Reef master planned community are exempt from the below listed Land Development Code Sections related to level

of service / concurrency, because the Ocean Reef master planned community is responsible for providing financing, operating, and regulating of its facilities and services needed to serve development within the Ocean Reef community:

1. Sec. 114-2. Adequate Facilities and Review Procedures.
2. Sec. 114-3. Surface Water Management Criteria. (provided any required state or federal stormwater requirements are met and the stormwater management facilities are in place and available to serve the development no later than the issuance a certificate of occupancy)
3. Sec. 114-6. Curbs and Gutters.
4. Sec. 114-7. Sidewalks and Shared Use Paths.
5. Sec. 114-8. Installation of Utilities and Driveways.
6. Sec. 114-9. Water Supply and Sanitary Sewer Service.
7. Sec. 114-10. Road and Private Drive Name Signs.
8. Sec. 114-11. Traffic-Control Signs and Devices.

b. Sanitary sewer system availability shall be in place and available to serve new nonresidential development no later than the issuance of a certificate of occupancy or its functional equivalent. The Ocean Reef sanitary system must be constructed, operated and connected to central wastewater management facilities pursuant to s. 403.086(11), F.S., or the upgrade of onsite sewage treatment and disposal systems must be pursuant to s. 381.0065(4)(1), F.S.

c. Nonresidential structures and uses within Ocean Reef master planned community are exempt from the following sections contained within Chapter 114 related to development standards, because Ocean Reef Master Planned Community has developed its own community development standards to maintain and implement its community character and vision:

1. Sec. 114-13. Fences.
 - a. exempt provided the construction of fences shall not result in or cause any tree abuse and no fence shall be placed so as to extend into or through any wetlands or water bodies, or extend beyond the mean high tide line on any property.
2. Sec. 114-14. Recycling and Solid Waste Collection Areas.
3. Sec. 114-15. Accommodation for Mass Transit.
4. Sec. 114-16. Planned Bicycle or Pedestrian Facility Requirement.
5. Sec. 114-45. Energy Conservation Standards.
6. Sec. 114-46. Potable water conservation standards.
7. Sec. 114-66. [Parking and Loading] Purpose and Intent.
8. Sec. 114-67. Required Off-Street Parking.
9. Sec. 114-68. Parking Agreements.
10. Sec. 114-69. Required Number and Size of Loading/Unloading Spaces.
11. Sec. 114-70. Restriction on Use of Parking and Loading Spaces.
12. Sec. 114-71. Bicycle Parking.
13. 114-106. Landscaping Incentives.
14. 114-107. Rainwater Collection System Criteria.
15. 114-108. Landscaping Plan Required.
16. 114-109. Nonconforming Landscaping.
17. Sec. 114-124. [Scenic Corridor and Bufferyards] Required.
18. Sec. 114-125. Scenic Corridor.
19. Sec. 114-126. District Boundary Buffers.

- 20. Sec. 114-127. Required Scenic Corridor and Major Street Buffers.
- 21. Sec. 114-128. Bufferyard Standards.
- 22. Sec. 114-129. Responsibility for District Boundary Bufferyards.
- 23. Sec. 114-130. Nonconforming Buffers.
- 24. Sec. 114-159. Outdoor Lighting.
 - a. *exempt provided all outdoor lighting conforms to the requirements of this article and the sea turtle protection provisions of Chapter 12, Article V.*
- 25. Sec. 114-160. Outdoor Lighting Standards.
- 26. Sec. 114-161. Maximum Illumination.
- 27. Sec. 114-162. Shielding of Nonresidential Lighting.
- 28. Sec. 114-163. Waterfront Lighting.
- 29. Sec. 114-164. Nonconforming Lighting.

6. Setbacks. The following setback provisions shall control and supersede for nonresidential development and redevelopment within the Ocean Reef Master Planned Community:

- a. **Front yard Setback:** Development and redevelopment shall comply with all front yard setback requirements contained within Sections 131-1 and 131-3, except the following allowances are permitted:
 - 1. The total combined area of accessory structures shall be permitted to occupy up to one hundred percent (100%) of the front yard setbacks within the Ocean Reef Overlay District, provided compliance with the open space requirements established in LDC Sections 118-4, 130-162 and 130-164 is maintained; and
 - 2. The required front yard setback for nonresidential accessory structures, limited to driveways walkways, off-street parking, and outdoor lighting shall be zero (0) feet.
- b. **Side Setback:** Development and redevelopment shall comply with all side yard setback requirements contained within Sections 131-1 and 131-3(d), except the following allowances are permitted:
 - 1. The required front yard setback for nonresidential accessory structures, limited to driveways walkways, off-street parking, and outdoor lighting shall be zero (0) feet.
- c. **Rear Setback:** Development and redevelopment shall comply with all rear yard setback requirements contained within Sections 131-1 and 131-3(e), except the following allowances are permitted:
 - 1. Accessory structures, including off-street parking, shall be setback a minimum of five (5) feet from the rear property line.

7. Shoreline setbacks. Pursuant to Policy 112.1.1, and notwithstanding Section 118-12(c), nonresidential accessory structures will be permitted in shoreline setbacks within the Ocean Reef Master Planned Community as follows:

- a. **Along lawfully altered shorelines adjacent to manmade canals, channels, and basins:**
 - 1. The combined area of all accessory structures may occupy up to ninety percent (90%) of the upland area of the required 20-foot shoreline setback.
 - 2. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of five (5) feet from the MHW line. With the exception of docks and erosion

control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 20-foot shoreline setback if the structure is constructed to avoid any off-site discharge of stormwater from the subject parcel.

- b. Along unaltered or unlawfully altered shorelines located along natural non-dredged waterways and open water:
 - 1. The combined area of all accessory structures may occupy up to seventy percent (70%) of the upland area of the required 50-foot shoreline setback.
 - 2. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of ten (10) feet from the MHW line or the landward extent of the mangroves, whichever is farther landward, and shall be located in upland areas. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 50-foot shoreline setback if the structure is constructed to avoid any off-site discharge of stormwater from the subject parcel.

8. Vegetation and Landscaping. The development and redevelopment of nonresidential structures and uses within Ocean Reef Master Planned Community shall adhere to:

- a. the upland native vegetation clearing limits established in Policy 101.5.27;
- b. mitigation for the removal upland native vegetation, requiring payment to the Monroe County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a 2:1 basis;
- c. shall not impact wetland areas identified in Policies 102.1.1 or 204.2.2;
- d. shall require landscaping material to be native species free of disease, invasive pests, and invasive fungi; and require the removal of and, not include the planting of, invasive exotic plant species. The landscape material size and quantity, installation standards, irrigation and maintenance criteria shall be based on criteria established by the Ocean Reef Master Planned Community.

9. Height. The maximum height of any structure or building shall comply with Section 131-2(a) and Comprehensive Plan Policy 101.5.31.

(e) RESIDENTIAL DEVELOPMENT STANDARDS AS PROVIDED IN POLICY 112.1.1.

- 1. **Open Space.** Notwithstanding Section 130-157, parcels designated within the Sparsely Settled (SS) zoning district, with a lawfully established residential dwelling unit, shall have a minimum zoning open space requirement of fifty percent (50%).
- 2. **Height.** The maximum height of any structure or building shall comply with Section 131-2 and Comprehensive Plan Policy 101.5.31.

IV. ANALYSIS OF PROPOSED AMENDMENT –AND CONSISTENCY WITH THE MONROE COUNTY LAND DEVELOPMENT CODE

Staff is recommending edits to the Applicant’s proposal in an effort to provide for internal consistency of the Comprehensive Plan. **Staff edits are included to address the Applicant’s submission on October**

19, 2021 and are detailed in subsection “*Consistency with LDC Section 102-158(d)(7)(b)(5) Recognize a need for additional detail or comprehensiveness*”, identified this report.

As a master association, Ocean Reef governs development specifically to protect the interests of its residents. Ocean Reef’s internal development rules and regulations control the development of residential and non-residential projects in order to maintain the community character of the master association and protect the interests of its residents. Many of the nonresidential properties within Ocean Reef contain nonconformities and the proposed text amendment would provide flexibility to address the unique conditions. The existing nonresidential structures and uses are an integral part of Ocean Reef and provide essential services to the residents of the community.

Consistency with the LDC

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

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

Per the Applicant: No response provided.

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

Per the Applicant: No response provided.

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

Per the Applicant: The proposed Overlay is based on a need to revise data errors contained within the Code. The current Code was enacted after the Ocean Reef Club and Torchwood properties within Ocean Reef were developed, and as such a large portion of the zoning districts and other items are erroneously determined and do not fit with the purpose they should serve. A prime example of this is the Marlin Hotel, depicted below and described within this Application, that is zoned Sparsely Settled (SS), and as such currently violates open space, impervious surface, setbacks and parking.

Permitting an isolated community to self-govern and approve or deny the amendments within this Application furthers the objectives of the Code. The Amendment encourages sound, attractive, and practical procedures for the Ocean Reef Club Properties that such provisions and exemptions would affect which will result in flexible planning that will result in innovative and efficient regulations.

The proposed Overlay would serve to allow Ocean Reef Club to self-correct such data errors internally without County involvement. As an isolated community, this approach considers and encourages best practices for correcting data errors for the particular community without adversely impacting constituents of the County located elsewhere.

The Applicant asserts that there are errors due to application of zoning designations to specific properties. An alternative way to address inconsistencies with the existing use of a property and adopted zoning designation would be to apply for an amendment to the Official Land Use (Zoning) District Map (and the Future Land Use Map, if applicable).

The proposed modifications and amendments to the Land Development Code would allow Ocean Reef to modify regulations to allow for greater internal control over development with Ocean Reef as it relates to setbacks, nonconforming uses, nonconforming structures, and development standards.

The Applicant has provided language that allows flexibility to Ocean Reef by allowing the utilization of regulations and development standards reviewed and authorized by Ocean Reef Club. Additionally, the proposed language exempts Ocean Reef from sections of the LDC directly related to level of service / concurrency because the Ocean Reef master planned community is responsible for providing financing, operating, and regulating of its facilities and services needed to serve development within the Ocean Reef community.

All land development regulations enacted or amended must be consistent with the adopted comprehensive plan. The proposed LDC amendments, *with staff recommended edits*, are consistent with the proposed Comprehensive Plan text amendment to establish Goal 112 and associated objectives and policies.

4. New issues;

Per the Applicant: No response provided.

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

Per the Applicant: The proposed Overlay is based on a need for additional detail or comprehensiveness. The current Code has policies that encourage communities to be involved in the decision-making process regarding the character of their community developments. Permitting Ocean Reef Club to self-govern and approve or deny the exempted provisions, as they apply to the Ocean Reef Club Properties, furthers the objectives of the Code as it encourages the orderly development and construction of commercial structures or buildings that fit with the architectural design and community character of the Ocean Reef community. Further, the Overlay would allow the reconstruction of existing commercial structures and buildings – which are legally non-conforming structures in many cases – within the Overlay area -- in the event of damage or destruction requiring substantial improvement.

The Overlay encourages sound, attractive, and practical procedures for the Ocean Reef Club Properties, and such provisions and exemptions will result in flexible planning that will result in innovative and efficient regulations. Permitting the Ocean Reef Club to self-govern development will not run afoul of the basic principles for zoning currently in place such as safety, longevity, and community character.

All land development regulations enacted or amended must be consistent with the adopted comprehensive plan. The proposed amendment may need to specify the specific standards for exemption and/or would require amendments to the Comprehensive Plan as identified in the staff report.

6. Data updates;

Per the Applicant: No response provided.

In no event shall an amendment be approved which will result in an adverse community change to the planning area in which the proposed development is located or to any area in accordance with a livable communities master plan pursuant to findings of the board of county commissioners.

Per the Applicant: There will be no adverse change to unincorporated Monroe County if the Overlay is approved. As discussed herein, there are no increased concurrency, environmental, or practical impacts associated with the Ocean Reef Club Properties having their development standards relaxed or removed and permitting Ocean Reef Club to self-govern such standards. All such development will be required to at a minimum comply with level of service, concurrency, and performance standards as set forth in the Code. The Overlay is geographically limited to only the Ocean Reef Club Properties. The exemptions, reductions, and deviations from development standards and other provisions contained within the LDR only apply to non-residential and transient uses.

Staff does not anticipate the proposed amendment to result in an adverse community change to Ocean Reef provided that the recommended changes to the proposed text amendment are incorporated.

V. STAFF-RECOMMENDED CHANGES TO PROPOSED AMENDMENT

Staff is recommending edits to the Applicant's proposal in an effort to provide for internal consistency of the Land Development Code (LDC). While these edits are provided to address the LDC, as noted in the LDC consistency review (Section IV) of this report, the Applicant will need to address consistency issues with the adopted Comprehensive Plan.

The Applicant's proposed text, as submitted on **October 19, 2021**, is shown as follows: additions are in underlined, deletions are ~~stricken through~~. Staff recommended changes are in **red** (additions to Amendment as initially proposed underlined and deletions to Amendment as initially proposed ~~stricken through~~).

Chapter 130 – LAND USE DISTRICTS

ARTICLE IV. - OVERLAY DISTRICTS

Sec. 130-141. Ocean Reef Overlay District

- (a) Purpose and Intent. The purposes of the Ocean Reef Overlay District are to implement applicable goals, objectives, and policies of the Comprehensive Plan established under Goal 112 and to allow development that primarily serves the needs of the permanent residents of the Ocean Reef master planned community a gated 100+ acre master planned community.

The intent is to protect and maintain the character of Ocean Reef Club, Inc. and the Ocean Reef master planned community by establishing specific standards, exemptions and reductions for the Ocean Reef master planned community which self-regulates development standards and monitors development requests by its members.

- (b) **Boundary.** The Ocean Reef Overlay District shall be shown as an Overlay district on the Official Land Use District (zoning) map.
- (c) **Applicability.** In order for a property owner to utilize the standards, exemptions and reductions ~~conferred~~ established within the Ocean Reef Overlay District, an amendment to the Official Land Use District (Zoning) Map shall be required and such overlay shall be shown on the Official Land Use District (Zoning) Map.
- (d) **NONRESIDENTIAL DEVELOPMENT STANDARDS AS PROVIDED IN POLICY 112.1.1.**

The following provisions shall control and supersede existing provisions of the Land Development Code relating to nonresidential structures and uses within the Ocean Reef Master Planned Community.

1. Nonconforming Structures and Uses. Notwithstanding Section 102-56 *Nonconforming Use*, Section 102-57 *Nonconforming Structures* and Section 102-58 *Nonconforming Accessory Uses and Accessory Structures*, the following provisions shall control:

- a. Lawfully established nonconforming nonresidential principal and accessory structures and uses located within the Ocean Reef Overlay that are destroyed, substantially damaged or substantially improved may be repaired, restored and/or replaced, even if 100 percent destroyed, provided that they are rebuilt to preexisting use and that the nonconformity is not expanded or further violated.
- b. Accessory uses or structures associated with a lawfully established nonconforming nonresidential principal use may be permitted.
- c. A nonconforming nonresidential accessory use or structure may continue if its principal use or structure is destroyed, substantially damaged, or substantially improved, discontinued, removed, for redevelopment, provided that the owner is moving forward with redevelopment of a principal use or structure. with active concurrent permits for redevelopment of a principal use or structure without expansion.

In the absence of an active concurrent permit for redevelopment of a principal use or structure on the site, the accessory structure and use may remain for up to five years from the date of a disaster event. The Board of County Commissioners may extend the five-year time limit by resolution, if needed.

2. Open Space. Lawfully established nonresidential structures and uses may be repaired, restored and/or replaced using the previously approved open space ratio, provided stormwater management are in compliance with LDC Section 114-2(5):

- a. Lawfully existing nonresidential principal structures and uses, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the maximum shoreline setback is maintained.
- b. Lawfully existing nonresidential accessory structures and uses, which are nonconforming as to open space, may remain, be repaired, substantially improved, restored, or replaced without expansion and the shoreline setback is consistent with subsection 7 of this Section.
- c. New nonresidential principal and accessory structures development shall have an open space requirement of five percent (5%), provided the clearing limits in Policy 101.5.27 are not exceeded and development is not proposed within a wetland area identified in Policies 102.1.1 or 204.2.2.

3. Variances. Nonresidential structures may receive variances for front, side, and rear yard non-shoreline setbacks; bufferyards; off-street parking; loading spaces; landscaping, as approved by the Ocean Reef master planned community. Variances for nonresidential structures on property owned by Ocean Reef Club, Inc. with the non-for-profit amenities identified in the master planned community association documents, shall be the only property exempt from front, side, and rear yard non-shoreline setbacks; bufferyards; off-street parking; loading spaces; landscaping, and will not be required to provide evidence it has been approved by the Ocean Reef master planned community, based on its exemption under the Ocean Reef gated master planned community's governing documents.

The County shall recognize variances for properties not owned by Ocean Reef Club, Inc., upon evidence submitted that a variance has been approved by the Ocean Reef master planned community or Ocean Reef Club based on criteria established for granting a variance by the Ocean Reef master planned community.

4. Stormwater. The specific standards, exemptions and reductions shall govern Nonresidential structures and uses within Ocean Reef master planned community provided stormwater facilities adhere to the 25-year,72-hour South Florida Water Management District Standard, and eliminate off-property discharges and demonstrate that post development total nitrogen and total phosphorous loads are less than pre-development loads to the receiving water body (net improvement) or demonstrate a ninety five percent (95%) reduction in stormwater total nitrogen load and total phosphorus load. Treatment and disposal facilities must be designed and operated so that off-site discharges meet State water quality standards.

5. Development Standards.

a. Nonresidential structures and uses within Ocean Reef master planned community are exempt from the below listed Land Development Code Sections related to **level of service / concurrency**, because the Ocean Reef master planned community is responsible for providing financing, operating, and regulating of its facilities and services needed to serve development within the Ocean Reef community:

1.Sec. 114-2. Adequate Facilities and Review Procedures.

2.Sec. 114-3. Surface Water Management Criteria. (provided any required state or federal stormwater requirements are met and the stormwater management facilities are in place and available to serve the development no later than the issuance a certificate of occupancy)

3.Sec. 114-6. Curbs and Gutters.

4.Sec. 114-7. Sidewalks and Shared Use Paths.

5.Sec. 114-8. Installation of Utilities and Driveways.

6.Sec. 114-9. Water Supply and Sanitary Sewer Service.

7.Sec. 114-10. Road and Private Drive Name Signs.

8.Sec. 114-11. Traffic-Control Signs and Devices.

b. Sanitary sewer system availability shall be in place and available to serve new nonresidential development no later than the issuance of a certificate of occupancy or its functional equivalent. The Ocean Reef sanitary system must be constructed, operated and connected to central wastewater management facilities pursuant to s. 403.086(11), F.S., or the upgrade of onsite sewage treatment and disposal systems must be pursuant to s. 381.0065(4)(l), F.S.

c. Nonresidential structures and uses within Ocean Reef master planned community are exempt from the following sections contained within Chapter 114 related to development standards, because Ocean Reef Master Planned Community has developed its own community development standards to maintain and implement its community character and vision:

1.Sec. 114-13. Fences.

a. *All fences shall be exempt provided the construction of fences shall not result in or cause any tree abuse and no fence shall be placed so as to extend into or through any wetlands or water bodies, or extend beyond the mean high tide line on any property.*

2.Sec. 114-14. Recycling and Solid Waste Collection Areas.

3.Sec. 114-15. Accommodation for Mass Transit.

4.Sec. 114-16. Planned Bicycle or Pedestrian Facility Requirement.

5.Sec. 114-45. Energy Conservation Standards.

6.Sec. 114-46. Potable water conservation standards.

7.Sec. 114-66. [Parking and Loading] Purpose and Intent.

8.Sec. 114-67. Required Off-Street Parking.

9.Sec. 114-68. Parking Agreements.

10. Sec. 114-69. Required Number and Size of Loading/Unloading Spaces.

11. Sec. 114-70. Restriction on Use of Parking and Loading Spaces.

12. Sec. 114-71. Bicycle Parking.

13. 114-106. Landscaping Incentives.

14. 114-107. Rainwater Collection System Criteria.
15. 114-108. Landscaping Plan Required.
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17. Sec. 114-124. [Scenic Corridor and Bufferyards] Required.
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20. Sec. 114-127. Required Scenic Corridor and Major Street Buffers.
21. Sec. 114-128. Bufferyard Standards.
22. Sec. 114-129. Responsibility for District Boundary Bufferyards.
23. Sec. 114-130. Nonconforming Buffers.
24. Sec. 114-159. Outdoor Lighting.
 - a. *All outdoor lighting shall be exempt provided all outdoor lighting conforms to the requirements of this article and the sea turtle protection provisions of Chapter 12, Article V.*
25. Sec. 114-160. Outdoor Lighting Standards.
26. Sec. 114-161. Maximum Illumination.
27. Sec. 114-162. Shielding of Nonresidential Lighting.
28. Sec. 114-163. Waterfront Lighting.
29. Sec. 114-164. Nonconforming Lighting.

6. Setbacks. The following setback provisions shall control and supersede for nonresidential development and redevelopment within the Ocean Reef Master Planned Community:

- a. **Front yard Setback:** Development and redevelopment shall comply with all front yard setback requirements contained within Sections 131-1 and 131-3, except the following allowances are permitted:
 1. The total combined area of accessory structures shall be permitted to occupy up to one hundred percent (100%) of the front yard setbacks within the Ocean Reef Overlay District, provided compliance with the open space requirements established in LDC Sections 118-4, 130-162 and 130-164 is maintained; and
 2. The required front yard setback for nonresidential accessory structures, limited to driveways walkways, off-street parking, and outdoor lighting shall be zero (0) feet.
- b. **Side Setback:** Development and redevelopment shall comply with all side yard setback requirements contained within Sections 131-1 and 131-3(d), except the following allowances are permitted:
 1. The required front yard setback for nonresidential accessory structures, limited to driveways walkways, off-street parking, and outdoor lighting shall be zero (0) feet.

c. Rear Setback: Development and redevelopment shall comply with all rear yard setback requirements contained within Sections 131-1 and 131-3(e), except the following allowances are permitted:

1. Accessory structures, including off-street parking, shall be setback a minimum of five (5) feet from the rear property line.

7. Shoreline setbacks. Pursuant to Policy 112.1.1, and notwithstanding Section 118-12(c), nonresidential accessory structures will be permitted in shoreline setbacks within the Ocean Reef Master Planned Community as follows:

a. Along lawfully altered shorelines adjacent to manmade canals, channels, and basins:

1. The combined area of all accessory structures may occupy up to ninety percent (90%) of the upland area of the required 20-foot shoreline setback.
2. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of five (5) feet from the MHW line. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 20-foot shoreline setback if the structure is constructed to avoid any off-site discharge of stormwater from the subject parcel.

b. Along unaltered or unlawfully altered shorelines located along natural non-dredged waterways and open water:

1. The combined area of all accessory structures may occupy up to seventy percent (70%) of the upland area of the required 50-foot shoreline setback.
2. Accessory structures, including, but not limited to, pools, spas, and any screen enclosure over pools or spas shall be set back a minimum of ten (10) feet from the MHW line or the landward extent of the mangroves, whichever is farther landward, and shall be located in upland areas. With the exception of docks and erosion control structures, an accessory structure other than those listed above not exceeding 18 inches in height as measured from grade may be permitted within the 50-foot shoreline setback if the structure is constructed to avoid any off-site discharge of stormwater from the subject parcel.

c. All other shoreline setback provisions for principal and accessory structures within Policy 212.2.4 shall apply.

8. Vegetation and Landscaping. The development and redevelopment of nonresidential structures and uses within Ocean Reef Master Planned Community shall adhere to:

- a. the upland native vegetation clearing limits established in Policy 101.5.27; and
- b. mitigation for the removal upland native vegetation, requiring payment to the Monroe County Environmental Land Management and Restoration Fund in an amount sufficient to replace each removed plant or tree on a 2:1 basis; and
- c. shall not impact wetland areas identified in Policies 102.1.1 or 204.2.2; and
- d. shall required landscaping material to be native species to Monroe County free of disease, invasive pests, and invasive fungi; and require the removal of and, not include the planting of, invasive exotic plant species. The landscape material size and quantity, installation standards, irrigation and maintenance criteria shall be based on criteria established by the Ocean Reef Master Planned Community. Landscape plans submitted must indicate what is required landscaping by Ocean Reef Master Planned Community.

9. Height. The maximum height of any structure or building shall comply with Section 131-2(a) and Comprehensive Plan Policy 101.5.31.

(e) RESIDENTIAL DEVELOPMENT STANDARDS AS PROVIDED IN POLICY 112.1.1.

Monroe County shall exempt or minimize its development standards for lawfully established residential dwelling units within the Ocean Reef master planned community, which self-governs its internal land development in order to provide uniform development standards and architectural guidelines to protect the distinct community character within the Ocean Reef Master Planned Community as specified in the policies below.

- 1. **Open Space.** Notwithstanding Section 130-157, parcels designated within the Sparsely Settled (SS) zoning district, with a lawfully established residential dwelling unit, shall have a minimum ~~zoning~~ land use open space requirement of fifty percent (50%).
- 2. **Height.** The maximum height of any structure or building shall comply with Section 131-2 and Comprehensive Plan Policy 101.5.31.

VI. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.

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

GOAL 101: Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors, and protect valuable natural resources.

Policy 101.3.1: Monroe County shall maintain a Permit Allocation System for new residential development known as the Residential Rate of Growth Ordinance (ROGO) System. The Permit Allocation System shall limit the number of permits issued for new residential dwelling units. The ROGO allocation system shall apply within the unincorporated area of the county, excluding areas

within the county mainland and within the Ocean Reef planned development (Future development in the Ocean Reef planned development is based upon the December 2010 Ocean Reef Club Vested Development Rights Letter recognized and issued by the Department of Community Affairs). New residential dwelling units included in the ROGO allocation system include the following: affordable housing units; market rate dwelling units; mobile homes; and institutional residential units (except hospital rooms)...

Objective 101.5: Monroe County shall regulate future development and redevelopment to maintain and enhance the character of the community and protect natural resources by providing for the compatible distribution of land uses consistent with the designations shown on the Future Land Use Map.

Policy 101.5.27: All development shall be subject to clearing limits defined by habitat and the location of the property in the Land Use Tier Overlay Maps and the wetland requirements in Policy 102.1.1. The clearing limits of upland native vegetation for properties in the Ocean Reef planned development shall be limited to 40 percent. Except as defined in Policy 101.11.2, clearing of upland native vegetative areas in the Tiers I, II, III and Tier III-A shall be limited to the following percentages or maximum square footage...

Policy 105.2.1: Monroe County shall designate all lands outside of mainland Monroe County, except for the Ocean Reef planned development, into three general categories for purposes of its Land Acquisition Program and smart growth initiatives in accordance with the criteria in Policy 205.1.1. These three categories are: Natural Area (Tier 1); Transition and Sprawl Reduction Area (Tier II) on Big Pine Key and No Name Key only; and Infill Area (Tier III). The purposes, general characteristics, and growth management approaches associated with each tier are as follows...

Policy 105.1.4: Within one (1) year after the adoption of the 2030 Comprehensive Plan, Monroe County shall prepare redevelopment standards and within one year afterwards, shall amend the LDC to address the large number of nonconforming commercial structures that are non-compliant as to on-site parking, construction and shoreline setbacks, stormwater management, landscaping and buffers. By identifying the existing character and constraints of the different island communities, regulations can be adopted that provide incentives for redevelopment and permit the continuance of businesses while moving towards an integrated streetscape.

Policy 205.1.1: The County shall establish the following criteria, at a minimum, to use when designating Tiers:

* * * * *

5. Lands within the Ocean Reef planned development shall be excluded from any Tier designation.

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

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

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations, seagrass beds, 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)(l) 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:

163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public

health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government’s programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

VII. PROCESS

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

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

VIII. STAFF RECOMMENDATION

Staff recommends the Applicant address the comments and consistency issues identified in Section IV, *Analysis*, of this report.