

ADMINISTRATION COMMISSION
AMENDED AGENDA

December 7, 2010

Attachments to the items below can be viewed at the following link:
http://www.myflorida.com/myflorida/cabinet/adcom/20101207_index.html

1. **Approval of the minutes of the November 9, 2010, meeting.**

2. **Florida Keys Area of Critical State Concern:**
 - A. **Consideration of the Department of Community Affairs' (DCA) 2010 Removal of Designation Report;**
 - B. **Authorize the Secretary of the Commission to publish Rules 28-20.130 and 28-20.140 for Monroe County, Rules 28-18.100, 28-18.200, and 28-18.300 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada and adopt the rules if after publication no changes to the rules are needed. Authorize the DCA to hold a hearing on behalf of the Commission if one is requested; and**
 - C. **Authorize the DCA on behalf of the Commission, to file the rules for legislative ratification pursuant to 2010-279, Laws of Florida.**

Background

Section 380.0552, Florida Statutes, sets forth the Legislative intent for the protection and designation of the Florida Keys as an area of critical state concern. The statute was originally adopted in 1979 and amended several times thereafter by the Legislature. Intent provisions include:

- Establish a land use management system that protects the natural environment of the Florida Keys.
- Establish a land use management system that conserves and promotes the community character of the Florida Keys.
- Establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services.
- Provide affordable housing in close proximity to places of employment in the Florida Keys.
- Establish a land use management system that promotes and supports a diverse and sound economic base.
- Protect the constitutional rights of property owners to own, use, and dispose of the real property.
- Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys.
- Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys.
- Protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities that meet the requirements of subsections 381.0065(4)(1) and 403.086(10), as applicable.

In the mid 90's, there was litigation related to the adoption of the 2010 Monroe County Comprehensive Plan. This resulted in a proceeding before the Administration Commission regarding the need for more effective growth controls and infrastructure improvements as a result of hurricane evacuation deficiencies, water quality problems, and habitat loss in the Florida Keys. In 1995, the Commission issued a Final Order in the proceeding finding among other things that the carrying capacity of the nearshore waters of the Florida Keys had been exceeded by the failure to install adequate sewage and stormwater facilities for the existing development. The Final Order directed the Secretary of the Commission to begin rulemaking to take actions necessary for Monroe County to have a growth management comprehensive plan to adequately protect the unique environment of the Florida Keys. Specific actions included:

- Establish a building permit allocation system for new residential growth.
- Set appropriate water quality level of service standards.
- Prepare a Sanitary Wastewater Master Plan.
- Replace and/or improve illegal septic systems and repair inoperative systems.
- Ensure traffic capacity improvements for hurricane evacuation.
- Complete a Stormwater Master Plan.
- Adopt certain Land Development Regulations.
- Compile a list prioritizing lands for acquisition.
- Create a Habitat Conservation Plan.

As a result of the litigation, the Administration Commission adopted a rule in 1996 that set forth a work program to address cesspit elimination, central wastewater treatment, stormwater management and treatment, wetland and habitat protection, preservation of endangered species, hurricane evacuation, and affordable housing. The deadline for completion of the work program tasks identified in the rule was amended several times with the current completion date of all tasks being 2007. In addition, the 1999 Legislature adopted Chapter 99-395, Laws of Florida, which mandated advanced wastewater treatment standards in the Florida Keys by July, 2010. Legislation in 2010 extended the deadline for the advanced wastewater treatment standards to 2015. Additionally, the Legislature mandated that the designation of the Florida Keys as an area of critical state concern could not be removed until all tasks specified in Commission rules are completed.

Florida Keys Area of Critical State Concern 2010 Removal of Designation Report

Section 380.0552, Florida Statutes, provides that the Administration Commission is required to annually review the progress of the local governments in completing tasks of the work program that will lead to the eventual removal of the area of critical state concern and ensure protection of the Florida Keys resources. Section 380.0552(4), Florida Statutes, and Commission Rule 28-20.110, FAC, require the Department of Community Affairs (DCA) to report annually to the Administration Commission, detailing the progress toward completing the work program tasks.

The DCA's 2010 Removal of Designation Report for Monroe County, the City of Marathon and the Village of Islamorada was submitted to the Commission on November 29, 2010, detailing the status of each task of the work program referenced in Rule 28-20.110, FAC. The Report includes a narrative summary and matrices for Monroe County, the City of Marathon, and the Village of Islamorada, addressing the major themes of Carrying Capacity and Habitat Protection, Hurricane Evacuation, and Water Quality and associated strategies to achieve the work program tasks.

The DCA recommends that substantial progress toward accomplishing the strategies of the work program have been achieved for the City of Marathon and Monroe County but not for the Village of Islamorada. The DCA further recommends two options for Commission consideration: 1) resume rulemaking and reduce the Village of Islamorada building permit allocations by twenty percent; or 2) direct the Village of Islamorada to provide a report by June 1, 2011, that includes a wastewater financing plan. In the event that the Village does not satisfy the June 1, 2011, reporting requirement, the DCA recommends the Commission promulgate a rule that would result in an amendment to the comprehensive plan reducing the building permit allocation by twenty percent.

Rulemaking and 2010 Legislation

On October 28, 2008, the Commission authorized staff to undertake rule development to update the current Commission rule detailing the work program tasks for Monroe County, the City of Marathon, and the Village of Islamorada. The DCA on behalf of the Commission, held six workshops on the proposed rules on December 16 and 17, 2008, and February 23, 2009. It became clear that implementation of Chapter 99-395, Laws of Florida, would not be achieved by the statutorily mandated date of July, 2010. In 2009, staff, working with the local governments, state agencies and stakeholders, reached consensus on proposed legislative changes concerning the deadlines for the wastewater upgrades in Chapter 99-395, Laws of Florida, as well as changes to the process for removal of designation. The Commission approved the proposed legislative changes on November 17, 2009.

During the 2010 Legislative Session, changes were adopted in sections 380.0552(4), 403.086(10), and 381.0065(4), Florida Statutes, containing the new process for the removal of designation and extension of the deadlines to meet advanced wastewater treatment standards to reduce nutrient loading in the nearshore waters in the Florida Keys Area of Critical State Concern. The Legislature specifically provided the Administration Commission with authority to adopt rules to administer these sections.

The DCA has modified rules to incorporate 2010 statutory changes and to update the tasks that have been agreed upon by the local governments, state agencies, and stakeholders. These tasks have been reflected in the Commission's 30 Day Report matrices in 2008 and 2009 and are reflected in the proposed rules recommended by the DCA.

Staff recommends approval of the rules recommended by DCA without the reduction in building permits for the Village of Islamorada. Furthermore, staff recommends the Village provide a wastewater financing plan to the DCA and the Commission by June 1, 2011. The DCA will recommend to the Commission appropriate actions to ensure that the Village of Islamorada meets the requirements of law.

Applicability of 2010-279, Laws of Florida, to Proposed Rules

On November 16, 2010, 2010-279, Laws of Florida, became effective revising rulemaking procedures provided in Chapter 120, Florida Statutes. The proposed rules for Monroe County, the City of Marathon and the Village of Islamorada have been reviewed applying the new statutory requirements. To assist in the analysis of the applicability of 2010-279, Laws of Florida, the DCA prepared a Statement of Estimated Regulatory Costs (SERC) associated with the proposed rules. According to the SERC prepared by DCA, the proposed rules are projected to exceed regulatory costs thresholds in 2010-279, Laws of Florida. If the Commission approves the staff recommendation DCA on behalf of the Commission will file the rules with the legislature for ratification during the 2011 Legislative Session. This rulemaking and legislative ratification procedure has been verified with staff of the Joint Administrative Procedures Committee. See Rulemaking Timeline.

Reasons for Proceeding with Rule Promulgation:

This action before the Commission is the continuation of significant efforts over many years to reach de-designation of the Florida Keys Area of Critical State Concern. In the past four years, the Legislature, local governments, the Departments of Community Affairs, Environmental Protection and Health, and other stakeholders have reached an unprecedented level of cooperation in the implementation of the Florida Keys Area of Critical State Concern program history. Approval of the staff recommendation will continue this partnership and will have the following benefits

- Implement legislative intent and mandates of the 2010 Legislation for the Florida Keys, including requirements for specifying work program tasks by rule.
- Assist local governments to generate revenue and secure financing for wastewater and stormwater projects, as well as land acquisition.

- Ensure that hurricane evacuation tasks are completed as scheduled to ensure public safety.
- Reduce the liability of the state and local governments with respect to property rights.
- Provide accountability and transparency to ensure that specific tasks are completed by the agreed upon interim deadlines without jeopardizing success in meeting the statutorily mandated 2015 deadline.

Amended Staff Recommendation:

1. Continue the Florida Keys Area of Critical State Concern designation and accept the DCA's 2010 Removal of Designation Report finding that substantial progress has been achieved in completing interim work program tasks by Monroe County and the City of Marathon but not by the Village of Islamorada. Require the Village of Islamorada to provide a wastewater financing plan to DCA and the Commission by June 1, 2011, for consideration and appropriate action.
2. Direct staff to prepare the "30 Day Report" detailing the work program tasks that must be completed within the next 12 months and provide the report to the local governments.
3. Approve for publication and adoption Rules 28-20.130 and 28-20.140, for Monroe County, Rules 28-18.100, 28-18.200, and 28-18.300 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada if after publication no changes to the rules are needed. Authorize the Department of Community Affairs to hold a hearing on behalf of the Commission if one is requested.
4. Authorize the DCA on behalf of the Commission to file Rules 28-20.130 and 28-20.140, for Monroe County, Rules 28-18.100, 28-18.200, and 28-18.300 for the City of Marathon, and Rules 28-19.300 and 28-19.310 for the Village of Islamorada for legislative ratification pursuant to 2010-279, Laws of Florida.

Back-Up

DCA's Florida Keys Area of Critical State Concern 2010 Removal of Designation Report. (Distributed with original agenda materials.)

Proposed rule language for Monroe County, the City of Marathon, and the Village of Islamorada. (Distributed with original agenda materials.)

Amended Proposed rule language to restore the building permit allocations to the Village of Islamorada.

Rulemaking Timeline prepared by the Department of Community Affairs

Preliminary Statement of Projected Costs Related to Rulemaking. (Distributed at 12/1/10 Cabinet Aides meeting.)

Statement of Estimated Regulatory Costs prepared by the Department of Community Affairs (To be distributed separately on 12/6/10.)

Comments on hurricane evacuation from John Hammerstrom submitted on December 1, 2010.

Section 380.0552, Florida Statutes. (Distributed with original agenda materials.)

2010-279, Laws of Florida.