
**CORRESPONDENCE WITH NON-
FEDERAL SPONSOR APPENDIX**

**FLORIDA KEYS COASTAL STORM RISK
MANAGEMENT FEASIBILITY STUDY
MONROE COUNTY, FLORIDA**

**DRAFT INTEGRATED FEASIBILITY REPORT AND
ENVIRONMENTAL IMPACT STATEMENT**

APPENDIX H

June 2020



**U.S. Army Corps
of Engineers
Norfolk District**

County of Monroe
The Florida Keys



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April 7, 2020

Susan E. Layton
Chief, Planning & Policy Branch
Water Resources Division
Norfolk District, U.S. Army Corps of Engineers
803 Front Street
Norfolk, VA 23510

Dear Ms. Layton:

This correspondence is a formal request for a waiver related to mandatory land acquisition as a non-structural measure of the Florida Keys Coastal Storm Risk Management Study (FKCSRMS) tentatively selected plan (TSP). We have reviewed previously referenced Corps policy in response to a series of questions we previously provided to the U.S. Army Corps of Engineers (Corps).

Simply put, Monroe County is requesting a waiver that the mandatory nature of the property acquisition contemplated in the FKCSRMS become voluntary. Based on our review of the policies referenced by the Corps as requiring mandatory acquisition, we believe that this would have far reaching economic implications for the County and our property owners. While we remain committed to working with the Corps to advance the FKCSRMS, at this time a waiver is important.

The question the County previously submitted to the Corps was #18. Where is the citation in rule or statute that requires acquisition be mandatory? And that a homeowner cannot choose elevation over acquisition? Corps Response: The USACE Planning Bulletin issued in December 2018 is the policy that requires eminent domain be used to implement acquisition if included in a recommended plan. Paragraph 4 describes acquisition as mandatory.

In order to fully understand the nature of acquisition as a mandatory measure, a more complete review of the referenced Planning Bulletin is helpful. The USACE Planning Bulletin 2019-03, December 2018, Paragraph 3 states:

Existing policy established in reference 1.a. requires that USACE analyses formulate, evaluate, and present a plan that reasonably maximizes net National Economic Development (NED) benefits. Prior interpretation of this requirement with respect to nonstructural measures and plans was to formulate and evaluate plans at the individual structure level. There are numerous problems with that approach, which include but are not limited to: fidelity of depth damage function, *uncertainty with individual structure data*, overall risk management, and *other social effects*. For these and other reasons, the policy going forward is that 'reasonably maximizing' *does not require individual structure benefit-cost analysis*.

Paragraph 3.a states:

All future nonstructural analyses will formulate and then evaluate measures and plans using a logical aggregation method. Examples include, but are not limited to: grouping by structures' main floor elevation; census block or tract boundaries; neighborhoods or communities sharing common infrastructure; neighborhoods or communities sharing common floodplains; and structures within

other geophysical boundaries or sharing other flood characteristics...

The USACE Planning Bulletin 2019-03, December 2018, Paragraph 4 states:

Participation rate. Reference 1.g. acknowledges the requirement for a complete plan includes retaining the use of eminent domain, *if necessary, for acquisition, [Emphasis added]* relocation, and permanent evacuation of the floodplain. However, all other nonstructural measures cannot be mandatory. Thus, for all nonstructural measures but acquisition, relocation, and evacuation, participation is voluntary. Participation rate uncertainty brings in to question plan selection and the point at which benefits may no longer exceed costs for a potential project. *A standard or minimum participation rate does not exist, as the characteristics of a community influence its potential participation rate in a USACE nonstructural plan.* Project delivery teams shall consider participation rates that are appropriate for a community and utilize sensitivity analyses of different participation rates to clearly communicate to decision makers the inherent uncertainty of benefits exceeding costs and plan selection. Project delivery teams shall describe the assumptions and methodologies used to determine participation rates in the decision document and supporting appendices. Reference: 1.g. Planning Bulletin 2016-01, Subject: Clarification of Existing Policy for USACE, Participation in Nonstructural Flood Risk Management and Coastal Storm Damage, Reduction Measures.

The USACE Planning Bulletin 2016-01, December 2015, Paragraph 6.a) states:

In order to have a complete plan, the ability to use eminent domain must be retained and a condition of an implementable project. *A 100% voluntary participation plan for acquisition, relocation, permanent evacuation is not considered a complete plan and is not acceptable for USACE participation.* All future acquisition, relocation, and permanent evacuation recommendations for USACE participation must include the option *[Emphasis added]* to use eminent domain where warranted....

In reading and interpreting these Planning Bulletins holistically, we have several questions that necessitate further clarification by the Corps:

1. Planning Bulletin 2019-03 acknowledges the uncertainty with individual structure data, overall risk management, and other social effects. Our understanding of the TSP is that an individual structure benefit cost analysis was performed but that is not required. Has this uncertainty been factored into this analysis and how?
2. Planning Bulletin 2019-03 related to non-structural analyses states: Examples include but are not limited to: grouping by structures' main floor elevation; census block or tract boundaries; neighborhoods or communities sharing common infrastructure; neighborhoods or communities sharing common floodplains; and structures within other geophysical boundaries or sharing other flood characteristics." Was this aggregation model utilized and how?
3. In Planning Bulletin 2019-03, Reference 1.g. "the requirement for a complete plan includes retaining the use of eminent domain, if necessary, for acquisition, relocation, and permanent evacuation of the floodplain. However, all other nonstructural measures cannot be mandatory. Thus, for all nonstructural measures but acquisition, relocation, and evacuation, participation is voluntary... A standard or minimum participation rate does not exist, as the characteristics of a community influence its potential participation rate in a USACE nonstructural plan." Were relocation and evacuation non-structural measures also analyzed in the TSP as alternatives to mandatory acquisition and if so, why were they eliminated?
4. In Planning Bulletin 2016-01, we understand that a 100% voluntary participation plan is not considered "complete", but we are unclear where this necessitates that acquisition be mandatory. Additionally, it clearly states that "All future acquisition, relocation, and permanent evacuation recommendations for USACE participation must include the option to use eminent domain where warranted. We are unclear as

to where this points to acquisition as the non-structural measure that must be mandatory under this Bulletin. Is that because relocation and permanent evacuation were either not analyzed or screened out?

In the context of applying these policies to the acquisition feature of the FKCSRMS, it is clear that the mandatory nature of property acquisition, specifically in Monroe County, requires some new thinking due to the County's unique growth and housing circumstances. For a comprehensive overview of our Growth Management system please see the attached history to this correspondence.¹

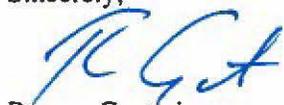
The County is governed by a Rate of Growth Ordinance (ROGO) process. ROGO established a building permit allocation system for new residential dwelling units. This system created limitations on the amount of development with the purpose of providing for the safe evacuation of residents and visitors during a 24-hour window ahead of a natural disaster. The ROGO system also enables the County to direct growth through a points-based competitive review process that allocates 126 market rate dwelling units that are annually available per State limitation and the County's Comprehensive Plan Policy 101.3.2. The total ROGO dwelling units are limited to maximum of 1,970 new allocations within the time frame of July 13, 2013 through July 12, 2023. The BOCC adopted ORD 005-2020 on 1/22/2020 to extend the remaining market rate allocations through 2026. Therefore, the number of new units coming online in Monroe County is severely limited. With six remaining allocation years, a maximum of 504 market rate permits are available through the annual allocation process with additional units available through an administrative relief review process and for affordable housing units. The ROGO points system encourages the infill of platted lots already serviced by existing infrastructure (such as, roads, water, sewage, and electrical). New residential development cannot initiate construction until the County awards a ROGO allocation.

Monroe County also has a significant affordable/workforce housing challenge worsened by the devastation of Hurricane Irma, from which the County is still in recovery mode. This problem is due to the quadruple impact of high land values, land limited by geographic and environmental features, a tourism economy with a prevalence of lower-paying, service-sector employment, and a housing supply limited by the controlled ROGO system.

The reality of our ROGO system, and our challenges regarding affordable and workforce housing before and exacerbated by Hurricane Irma, make the housing market in Monroe County very unique. There will be few relocation options for people that have their properties acquired under a mandatory acquisition program. Those options will be limited further as time continues in the next 6 years until they are exhausted. At this point, the only available housing stock for relocations will be units already constructed which are presumed to be more sought after because essentially there will be no more growth in the County. Given the timeframe for this FKCRMS, its final authorization and unknown appropriations, it is unknown if there will be any available housing stock to relocate people to under a mandatory acquisition program.

While we understand that waivers are not traditionally looked upon favorably by the Corps, we believe that the unique nature of these growth issues and the likely limited availability of any adequate housing stock for relocations must be considered. If there is any geographic area that warrants such a review, the FKCSRMS warrants it. There are very few structure measures that are resulting from this study and the impact to our community with mandatory residential property acquisition will have significant consequences for our community. We would urge you to consider and grant this waiver in favor of voluntary residential acquisition for that non-structural component. For additional information regarding this waiver request, please do not hesitate to contact myself at gastesi-roman@monroecounty-fl.gov or our Chief Resilience Officer Rhonda Haag at haag-rhonda@monroecounty-fl.gov or (305) 395-9928.

Sincerely,



Roman Gastesi
Monroe County Administrator

Monroe County includes a predominantly uninhabited mainland area in addition to 1,700 islands of the coral cay archipelago that lie along the Florida Straits. The Florida Keys National Marine Sanctuary, three (3) National Parks, five (5) State Parks, four (4) National Wildlife Refuges, and three (3) State Aquatic Preserves are located within the Florida Keys. Everglades National Park and the Big Cypress National Preserve encompass the Mainland Planning Area for Monroe County and are approximately 85 percent or equivalent to 562,149 acres of Monroe County's overall land mass.

Most of the Monroe County population reside in the archipelago. The unincorporated area of the islands is the subject of this growth management memorandum. This area is also the focus of most of the Comprehensive Plan and land development regulations in the County and includes the unincorporated portion of the land area designated as the Florida Keys Area of Critical State Concern.

In 1974, the State of Florida designated the Florida Keys as an "Area of Critical State Concern" under the provisions of Florida's 1972 Environmental Land and Water Management Act due to the environmental sensitivity of the region and the ability to safely evacuate residents out of the islands. As a designated Area of Critical State Concern, local planning and development regulations within the Florida Keys are governed by Sections 380.05 and 380.0552, F.S., which require State approval for modifications to the local comprehensive plan and land development regulations in the area.

In 1986, Monroe County adopted the State Comprehensive Plan, which went into effect on July 1, 1985. The State Comprehensive Plan was used as an interim land use control until such time as the County adopted its own local comprehensive plan.

In 1986, Monroe County adopted its first Comprehensive Plan, adopted by the Monroe County Board of Commissioners on February 28, 1986, and which went into effect on July 29, 1986 after review and approval by the Department of Community Affairs (DCA) and the Administration Commission.

In 1991, the Monroe County Board of Commissioners adopted the Monroe County 2010 Comprehensive Plan, which was subsequently revised pursuant to a settlement agreement and readopted in 1993 following several legal challenges. Ongoing legal proceedings prompted a 1995 Final Order, which resulted in further revisions and final adoption and effectiveness of the updated Comprehensive Plan in 1996. In 1996, the Florida Administrative Commission issued an Executive Order calling for the preparation of a carrying capacity analysis for the Florida Keys. During the final revision of the Plan, the concept of the "Work Program" was introduced that included a "carrying capacity approach" to growth management stemming from the Florida Keys Carrying Capacity Study (FKCCS). The FKCCS was designed to help determine the ability of the Florida Keys ecosystem, and the various segments thereof, to withstand all impacts of additional land development activities.

On July 13, 1992, the Monroe County Rate of Growth Ordinance (ROGO) became effective. ROGO established a building permit allocation system for residential dwellings to implement goals, objectives, and policies of the Monroe County Comprehensive Plan, such as regulating growth pressures that had been affecting its county. ROGO was utilized to allocate and manage growth and development for all new residential properties in the Florida Keys to implement a 24-hour evacuation of the residents and visitors during a natural disaster.

In 1998, the Florida Department of Transportation, Monroe County, the Florida Department of Community Affairs, the U.S. Fish and Wildlife Service, and the Florida Fish and Wildlife Conservation Commission signed a Memorandum of Agreement to develop a Habitat Conservation Plan (HCP) for the Key Deer and other protected species in the Florida Keys.

In 2001, Monroe County established the Non-Residential Rate of Growth (NROGO) in order to "ensure a reasonable balance between the amount of future non-residential (primarily commercial) development and the needs of a slower growing residential population".

On September 22, 2005, Ordinance 025-2005 was adopted, which established the use of the Tier System within the comprehensive plan as the basis for the competitive point system for ROGO and NROGO. The Tier System provides a graphical representation of categories of land with sensitive native habitat to lands not characterized as environmentally sensitive with development and infrastructure where new development is encouraged.

On March 15, 2006, Ordinance 009-2006 was adopted, which established the use of the Tier System overlay within the Land Development Code and implemented the simplified the ROGO Tier System and built in additional provisions to direct

growth to areas with existing services and away from vacant environmental sensitive land. These changes included sub-area boundary districts for allocation distribution, basis of scoring applications for unit allocation, and administrative relief.

On June 9, 2006, the U.S. Fish and Wildlife Service issued a Threatened and Endangered Species Incidental Take Permit (ITP), which allows for a maximum issuance of 200 new residential units through year 2023 for the Big Pine and No Name Key ROGO subarea. New development per the permit conditions requires additional habitat preservation.

In 2012, Monroe County (Resolution 226-2012) stipulated to the results of the 2012 Hurricane Evacuation Clearance Time Work Group and the State Hurricane Evacuation Model, which was updated based upon the 2010 Census data. The County entered into a Memorandum of Understanding with the State and other jurisdictions to document the inputs for the hurricane modeling and the results. The County continued to receive an allocation of 197 annual unit (126 market rate units) with a total unit maximum of 1,970 units through 2023. Per the Florida Keys Area of Critical State Concern Work Program, the Florida Legislature and the Administration Commission mandated that Monroe County include within the goals objectives and policies of its Comprehensive Plan measures, including established unit maximums, to protect public safety and welfare in the event of a hurricane by maintaining an evacuation clearance time for permanent residents of no more than 24 hours (Section 380 0552 9(a)(2), F.S., Rule 28-20.140, F.A.C.)

The County's Comprehensive Plan was updated on September 21, 2012 (Ordinance #21-2012) revising the allocation scoring system for land dedications and Tier III properties containing wetlands adjacent to Tier I properties.

On April 1, 2016, the BOCC adopted the 2030 Monroe County Year 2030 Comprehensive Plan (Ordinance #005-2016), which became effective on June 20, 2016. The updated plan provided for revised scoring criteria for ROGO. Additionally, the updates included making all affordable housing allocation available immediately instead of allocating affordable units annually. The updates also limited Tier I allocation to no more than one every two years in Big Pine Key and No Name Key ROGO Sub-area.

In 2018, Monroe County approximately had a population of nearly 75,000, implicating a growth rate of roughly -2.10% from 2017. In 2019, the estimated population was 76,636, equivalent to a -0.45% growth rate, according to the United States Census Bureau. During an evacuation, permanent residents of Monroe County are to vacate within 24-hours of a natural disaster, such as a hurricane.