

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: January 16, 2008

Division: Growth Management

Bulk Item: Yes  No

Department: Planning & Environmental Resources

Staff Contact: Andrew Trivette, Division Director  
Susan Grimsley, Assist. Co. Atty.

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**AGENDA ITEM WORDING:** A public hearing imposing an Interim Development Ordinance prohibiting the approval of new allocations of ROGO or NROGO for Big Pine Key and No Name Key until such time as a mitigation ordinance is adopted by the Board of County Commissioners or to be effective for allocations through and including the ROGO Allocation Quarter ending July 14, 2008.

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**ITEM BACKGROUND:** During the spring and fall of 2000 the residents and property owners of Big Pine and No Name Keys worked with Monroe County planning staff to develop the Master Plan for Future Development on Big Pine No Name Keys (Master Plan). However, in order for any new development to occur, including road widening improvements to US 1, an Incidental Take Permit (ITP) permit from the U. S. Fish and Wildlife Service (USFWS) was required. Consequently, Monroe County, the Florida Department of Transportation, and the Florida Department of Community Affairs applied for an Incidental Take Permit (ITP). To comply with the issuance criteria of the ITP, Monroe County and the co-applicants were required to develop a Habitat Conservation Plan (HCP) to mitigate the incidental take of the Key Deer resulting from development activities. The mitigation measure proposed was land acquisition. The purpose of the mitigation ordinance is to establish a funding source or other mechanism for land acquisition and conservation, in order to ensure that development bears its fair share of mitigation. Until this point, the County had enough land in its name to cover the mitigation required for new development.

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**PREVIOUS RELEVANT BOCC ACTION:**

Habitat Conservation Plan adopted – April 2003

Master Plan for Big Pine Key and No Name Key adopted – December 2004

Interim Development Ordinance prohibiting the approval of new Allocations of ROGO and NROGO – November 2007 (which expires January 31, 2008)

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**CONTRACT/AGREEMENT CHANGES:** N/A

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**STAFF RECOMMENDATIONS:** Approval.

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**TOTAL COST:** N/A

**BUDGETED:** Yes  No

**COST TO COUNTY:** N/A

**SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing \_\_\_\_\_ Risk Management \_\_\_\_\_

**DOCUMENTATION:** Included  Not Required \_\_\_\_\_

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_-2008

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS IMPOSING AN INTERIM DEVELOPMENT ORDINANCE PROHIBITING THE APPROVAL OF NEW ALLOCATIONS OF ROGO OR NROGO FOR BIG PINE KEY AND NO NAME KEY UNTIL SUCH TIME AS A MITIGATION ORDINANCE IS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OR TO BE EFFECTIVE FOR ALLOCATIONS THROUGH AND INCLUDING THE ROGO ALLOCATION QUARTER ENDING JULY 14, 2008 WHICHEVER OCCURS FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL INCONSISTENT PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR AN EFFECTIVE DATE**

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**WHEREAS**, utilization of the moratorium as a temporary measure to facilitate governmental decision-making, study, and the adoption of comprehensive plan amendments and/or land development regulations, is a legitimate governmental tool to facilitate logical and considered growth and a means of avoiding inefficient and ill-conceived development; and

**WHEREAS**, development on Big Pine Key and No Name Key is subject to the requirements of the Habitat Conservation Plan adopted in April, 2003 and the Master Plan for Future Development of Big Pine Key and No Name Key which was effective in December, 2004 ; and

**WHEREAS**, Florida Department of Transportation, Monroe County and the Florida Department of Community Affairs received a Federal Fish and Wildlife Incidental Take Permit (ITP) dated June 9, 2006 which limits development based on the potential taking of threatened and endangered species; and

**WHEREAS**, a certain amount of property in its natural state is required to comply with the requirements in the above documents; and

**WHEREAS**, to date, property owned by Monroe County as habitat for threatened and endangered species has been sufficient to compensate for the permitted development on Big Pine Key and No Name Key; and

**WHEREAS**, there is no longer surplus real property constituting habitat for threatened or endangered species owned by Monroe County sufficient to cover mitigation for public and private development; and

**WHEREAS**, property sufficient to compensate for the effects of development will have to be provided in order to mitigate the effects; and

**WHEREAS**, Monroe County finds it in the best interest of the public to establish a temporary moratorium on approval of allocations for building permits on Big Pine Key and No Name Key in order to determine the extent of mitigation required and the method of exacting such mitigation; and

**WHEREAS**, the Planning Commission recommended a six month interim development ordinance at its meeting on November 7, 2007 and the Board of County Commissioners approved a two month time period in Ordinance No.44- 2007 which expires January 31, 2008;

**WHEREAS**, the Planning Commission held a public hearing on this matter January 8, 2008;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY:**

**Section 1. Incorporation of Recitals.** The Board of County Commissioners adopts the preceding Findings of Fact and Conclusions of Law in support of its enactment of this Interim Development Ordinance.

**Section 2 . Interim Development Regulations.** Commencing February 1, 2008 Staff is directed to continue to defer the allocation of ROGO and NROGO awards for Big Pine Key and No Name Key until land development regulations can be passed establishing methods and amounts of mitigation required for allocations for building permits on Big Pine Key and No Name Key, or to be effective for allocations through and including the ROGO allocation quarter ending July 14, 2008 whichever occurs first; based on the quarterly evaluation and allocation system.

**Section 3. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance.

**Section 4. Repeal of Conflicting Provisions.** The provisions of the Monroe County Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed or stayed as necessary during the effective dates of this ordinance.

**Section 5. Approval by the State Department of Community Affairs.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the Monroe County Clerk is authorized to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes and to the Secretary of State for the State of Florida, as required.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

**PASSED AND ADOPTED,** by the Board of County Commissioners of Monroe County, Florida at a regular meeting of said Board on the \_\_\_\_ day of \_\_\_\_\_, 2008.

Mayor Charles "Sonny" McCoy \_\_\_\_\_  
Mayor Pro Tem Mario DiGennaro \_\_\_\_\_  
Commissioner Dixie Spehar \_\_\_\_\_  
Commissioner George Neugent \_\_\_\_\_  
Commissioner Sylvia Murphy \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

By: \_\_\_\_\_

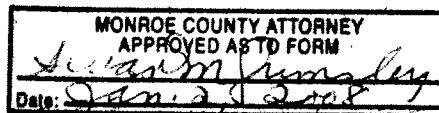
Mayor Charles : "Sonny" McCoy

(SEAL)

ATTEST: Danny L. Kolhage, CLERK

By: \_\_\_\_\_

Deputy Clerk



**To:** Board of County Commissioners

**Through:** Andrew Trivette, Director of Growth Management  
Townesley Schwab, Acting Planning Director

**From:** Susan Grimsley, Asst. County Attorney

**Date:** December 20, 2007

**RE:** PROPOSED INTERIM DEVELOPMENT ORDINANCE FOR BIG PINE KEY  
AND NO NAME KEY

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**Proposal:** Planning Commission - At the October 10, 2007 meeting of the Planning Commission, the Commission instructed staff to draft an ordinance to prevent the award of allocations on Big Pine Key and No Name Key for ROGO and NROGO until an ordinance determining the type of mitigation, and imposing and calculating mitigation could be passed. A moratorium on the award of ROGO allocations was passed by the BOCC effective December 1, 2007 for two months. It expires January 31, 2008. The proposed ordinance directs staff to defer allocation of ROGO and NROGO awards for Big Pine Key and No Name Key commencing February 1, 2008, until methods for mitigation for impacts to protected and endangered species can be established or for a length of time which covers the allocations through July 14, 2008, whichever occurs first.

#### **A. Previous County Action**

BOCC - the Big Pine Key Habitat Conservation Plan was adopted as part of the Comprehensive Plan in April, 2003. The Master Plan for Future Development of Big Pine Key and No Name Key was adopted and effective in December, 2004. Monroe County applied for an Incidental Take Permit along with Florida Department of Transportation, and the Florida Department of Community Affairs in May 2003. The Incidental Take Permit is dated June 9, 2006. These documents require mitigation by land preservation in order to allow further development. Until this point, the County had enough land in its name to cover the mitigation required for new development.

Development Review Commission - On November 6, 2007 the Development Review Committee will meet to review this moratorium and consider staff comments and those of the public.

The Planning Commission considered the original moratorium at its November 7, 2007 meeting, and recommended approval for six (6) months. The Planning Commission will consider this proposed extension at its regular meeting on January 8, 2008.

#### **B. Background**

During the spring and fall of 2000 the residents and property owners of Big Pine and No Name Keys worked with Monroe County planning staff to develop the Master Plan for Future Development on Big Pine No Name Keys (Master Plan). However, in order for any new

development to occur, including road widening improvements to US 1, an Incidental Take Permit (ITP) permit from the U. S. Fish and Wildlife Service (USFWS) was required. Consequently, Monroe County, the Florida Department of Transportation, and the Florida Department of Community Affairs applied for an Incidental Take Permit (ITP). To comply with the issuance criteria of the ITP, Monroe County and the co-applicants were required to develop a Habitat Conservation Plan (HCP) to mitigate the incidental take of the Key Deer resulting from development activities.

The mitigation measure proposed was land acquisition. The applicants proposed to acquire and conserve habitat lands totaling three (3) times the harvest value (H value) impacted by development. This proposal is incorporated into the Master Plan as *Action Item 9.2.4*, which proposes the creation of an environmental mitigation fee for land acquisition. The purpose of the mitigation fee is to establish a funding source for land acquisition and conservation, in order to ensure that development bears its fair share of mitigation.

**C. Intent** - It is the intent of this interim development ordinance to temporarily halt award of building permits for new development (not repairs or reconstruction) in order to pass a mitigation ordinance. The mitigation ordinance has been drafted.

#### **D. Consistency with Land Development Regulations and Comprehensive Plan**

This interim development ordinance is consistent with the Land Development Regulations and Comprehensive Plan because there are new issues as well as policies in the Big Pine Master Plan which need to be addressed. A moratorium is the only way to provide time to consider these issues and compose new regulations.

#### **E. Staff Recommendation**

**Staff recommends approval of this ordinance.**