

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 21, 2007

Division: Growth Management

Bulk Item: Yes ___ No X

Staff Contact Person: Andrew Trivette

AGENDA ITEM WORDING:

Public hearing to adopt an Ordinance amending the Monroe County 2010 Comprehensive Plan to include a Tier Overlay Map for all land in unincorporated Monroe County in the Florida Keys between Key West and Ocean Reef; the proposed ordinance includes the resolution of 147 outstanding erroneous Tier designations.

ITEM BACKGROUND: The Board of County Commissioners (BOCC), at a special meeting on November 1, 2006 directed Growth Management staff to prepare draft Tier Overlay Map amendments for possible inclusion in the Monroe County 2010 Comprehensive Plan (Comp Plan). Pursuant to the Commission's direction to process 147 map error corrections per (Resolution 148-2006), Staff has submitted Schedule 8 which provides details for the proposed 147 Tier designation changes.

As part of its Objections, Recommendations, and Comments report, DCA requested additional information on the 147 map error corrections. Staff in response to DCA's report prepared a spreadsheet with the requested information.

PREVIOUS RELEVANT BOCC ACTION:

Ordinance No. 10-2006 adopted March 15, 2006 & Ordinance No. 13-2006, adopted March 21, 2006 incorporated the unamended Tier Overlay District Maps and the corresponding criteria for each Tier designation into the Monroe County Current Land Use Map and the Monroe County Land Development Regulations.

December 2006-Transmittal of Tier Maps to DCA.

CONTRACT/AGREEMENT CHANGES: None.

STAFF RECOMMENDATION: Approval

TOTAL COST: N/A

BUDGETED: Yes N/A No ___

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes N/A No ___ **AMOUNT PER MONTH** N/A **Year** ___

APPROVED BY: County Atty X OMB/Purchasing ___ Risk Management ___

DOCUMENTATION: Included X Not Required ___

DISPOSITION: _____

AGENDA ITEM # _____

ORDINANCE NO. -2007

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN AMENDMENT TO THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN TO INCLUDE A TIER OVERLAY DISTRICT MAP DESIGNATION ON ALL LAND IN UNINCORPORATED MONROE COUNTY IN THE FLORIDA KEYS BETWEEN KEY WEST AND OCEAN REEF AND DESIGNATING BOUNDARIES FOR TIER 0, TIER I, TIER II, TIER III, TIER III-A (SPECIAL PROTECTION AREAS), AND TIER 4 PURSUANT TO THE CRITERIA IN POLICY 105.2.1 OF THE MONROE COUNTY 2010 COMPREHENSIVE PLAN; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; DIRECTING THE PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT TO FORWARD A COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Monroe County Board of County Commissioners, during two (2) public hearings held in December 2006, reviewed and considered a proposed amendment to provide for a Tier Overlay District Map designation on the Monroe County Future Land Use District Map to implement Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100 F.A.C. and the Tier Overlay system; and

WHEREAS, the Monroe County Board of County Commissioners, during public hearings held in December 2004, January, February, March, April, May, and June 2005, and March 2006, reviewed and considered a proposed amendment to provide for a Tier Overlay District Map designation on the Monroe County Current Land Use District Map to implement Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100 F.A.C. and the Tier Overlay system; and

WHEREAS, in Ordinance No. 010-2006 the Monroe County Board of County Commissioners adopted text and map amendments to Ordinance No. 018-2004 into the Land Development Regulations to include Tier Overlay District Map designations in accordance with Goal 105; and

WHEREAS, the Monroe County Board of County Commissioners makes the following Findings of Fact:

1. Goal 105 provides a framework for future development and land acquisition for the next 20 years that considers the carrying capacity of the Florida Keys, reduces sprawl and promotes sustainability.

2. The Tier Map designation was developed following the criteria in Goal 105, identifying areas appropriate for additional development and those which are important environmentally and should be preserved.

3. The initial Tier Map designation was developed following criteria in Goal 105, through use of computer mapping (GIS); and utilizing the 1986 Existing Conditions Map, environmental data produced by the Florida Marine Resources Institute utilized in the Florida Keys Carrying Capacity Study, recent aerial photography, Property Appraiser records, and on-site surveys.

4. The initial tier boundaries for the Tier Overlay District Map were drawn by the Growth Management Division staff using environmental and development information and digital data prepared by the Florida Marine Resources Institute and utilized in the Florida Keys Carrying Capacity Study, aerial photography, permitting and property tax records, and refined through site visits by the County Biologists and Planners.

5. The Planning Commission, after hearing public comments and staff input at four public hearings on the draft Map, recommended approval on November 3, 2004, to the Board of County Commissioners of the Tier Overlay District Map as an overlay to the Land Use District Map.

6. The Planning and Environmental Resources Department continued to work on refining the proposed boundaries based on new aerial photography, property records, and site surveys.

7. The Board of County Commissioners approved in concept revisions to the habitat protection elements of the proposed amendments to the Comprehensive Plan on August 17, 2005, in response to concerns raised by the Governor and Cabinet and negotiations with DCA staff.

8. The Board of County Commissioners adopted amendments to the Comprehensive Plan on September 22, 2005, that made further revisions to the Tier system by instituting a Tier III-A (Special Protection Area) for improved habitat protection.

9. The Growth Management Division staff based on detailed ground-truthing efforts by its staff and more recent aerial photography further refined the series of maps to depict proposed Tier III and Tier III-A (Special Protection Area) designated areas.

10. The Florida Department of Community Affairs and County staff reviewed proposed designated Tier III-A designated sites during a site visit in early December 2005, and reached tentative agreement on sites to be designated for further protection as Tier III-A (Special Protection Areas).

11. The Growth Management Division staff prepared revised maps designating Tier III-A areas, which were reviewed and conceptually approved by the Board of County Commissioners on December 20, 2005.

12. Subsequently, the Growth Management Division staff made final refinements to Tier boundaries based on written requests from property owners, the recommendations of the Special Master concerning requested boundary amendment revisions to Tier I (aka “Conservation and Natural Areas”), and further ground-truthing.

13. Hammock size is a major determinate of habitat quality according to the FKCCS; therefore size and connectivity are used in determining the boundary of Tier I areas to identify the best and most important terrestrial habitat areas for preservation.

14. Tier 0 includes all rights-of-way and submerged lands.

15. Tier I includes all contiguous hammock areas above four acres and restoration areas between fragmented smaller hammock patches to increase the hammock size and buffers where possible.

16. Tier III is appropriate for additional infill development because of the location and amount of existing development in the areas designated and the absence of significant upland native habitat patches.

17. Tier III-A, which is called a “Special Protection Area” in the Comprehensive Plan, is appropriate for the protection of the remaining isolated upland native habitat patches of one acre or greater located outside of Tier I.

18. Tier IV includes all lands owned by United States Government utilized by any branch of the United States Military, Department of Defense or Homeland Security.

19. The Tier Overlay District Map, when adopted, will become an overlay to the Future Land Use District Map.

20. The Tier Overlay District Map designating Tiers 0, I, II, III, and IV boundaries on Big Pine Key and No Name Key conforming to the adopted Community Master Plan for those two islands, was adopted by Ordinance 28-2005.

21. The Tier Overlay District Map for Big Pine Key and No Name is included in Exhibit A attached to this Ordinance without any change in the boundaries from the adopted Tier Overlay District Map for those islands to provide a uniform set of series of maps, as the official Tier Overlay District Map for Monroe County.

22. The Board of County Commissioners adopted Ordinance No. 010-2006 on March 15, 2006, thereby adopting the Tier Overlay District Map as a part of the Land Development Regulations as recommended by the Growth Management Division. Subsequently some Tier designations were found to be in error, identified in Exhibit A1 (Schedule 8), and those designations need to be corrected.

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

Section 1. The Tier Overlay District Map showing Tiers 0, I, II, III, III-A (Special Protection Area), and IV, attached hereto as Exhibit A, is adopted as an overlay to the Monroe County Future Land Use Map including all corrected designations as identified in Exhibit A1 (Schedule 8).

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict. The repeal of an ordinance herein shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

Section 4. This ordinance does not affect prosecutions for ordinance violations committed prior to the effective date of this ordinance; does not waive any fee or penalty due or unpaid on the effective date of this ordinance; and does not affect the validity of any bond or cash deposit posted, filed, or deposited pursuant to the requirements of any ordinance.

Section 5. This ordinance shall be forwarded by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

Section 6. This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission Approving the ordinance.

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Signature Page to Follow

Ordinance-Tier Overlay Maps

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the _____ day of _____, A.D. , 2007.

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

BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA

BY: _____
Mayor/Chairperson

(SEAL)

ATTEST: DANNY KOHLAGE, CLERK

Deputy Clerk

W. J. ... COUNTY ATTORNEY
APPROVED AS TO FORM
[Signature]
Date: 5-10-07

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County of Monroe

Growth Management Division

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Growth Management Division

2798 Overseas Highway
Suite #430
Marathon, FL 33050
Voice: (305) 289-2500
FAX: (305) 289-2536



Board of County Commissioners

Mayor Mario Di Gennaro, Dist. 4
Mayor Pro Tem Dixie Spehar, Dist. 1
George Neugent, Dist. 2
Charles "Sonny" McCoy, Dist. 3
Sylvia J. Murphy, Dist. 5

We strive to be caring, professional and fair

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TO: The Monroe County Board of County Commissioners

FROM: Ty Symroski, Growth Management Division Director

DATE: November 16, 2006

RE: Adoption of the Tier Maps into the Comprehensive Plan

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Background:

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During the presentation of the Tier Maps to the Governor and Cabinet there was a representation that the County would adopt the Tier Maps into the Comprehensive Plan. Subsequently the Board of County Commissioners (BOCC), on November 1, 2006, directed the Growth Management staff to prepare draft map amendments for the Monroe County 2010 Comprehensive Plan (Comp Plan) to incorporate the Tier Overlay Maps.

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The Monroe County Planning Commission is scheduled to review the staff proposed draft at a regular meeting on December 6, 2006 and their recommendation is forthcoming.

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Overview:

The Tier Maps designate geographical areas in the Keys portion of Monroe County into one of six (6) Tiers in order to:

- Assign ROGO and NROGO points,
- Determine the amount of clearing and
- Prioritize lands for public acquisition.

The Tier maps have been adopted into the Land Development Regulations and this adoption is currently being challenged. This proposed amendment will incorporate them as an overlay to the Future Land Use Map in the Comprehensive Plan. Consequently changes to the maps will follow the statutory procedures for Comprehensive Plan amendments as well as amendments to the Land Development Regulations.

During the drafting of the Tier Maps, the County had several processes for citizens to challenge the designation of specific parcels. These involved a staff review and a special master. The result was that 147 map errors were identified and the Board of County Commissioners directed staff to formally process these amendments as soon as an appropriate time became available (Resolution 148-2006). Therefore, staff is presenting these proposed changes for possible incorporation into this adoption hearing (Schedule 8 attached).

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2 **Analysis:**

3 There are four factors to consider when adopting the Tier Maps into the Comprehensive Plan.
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- 5 1. Impact on the process to amend the maps in the future. The process for amendments will be
6 more complex and require greater staff time.
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8 The current process to amend the tier maps involves:

- 9 • Planning Commission public hearing,
10 • Board of County Commission public hearing
11 • DCA approval (only as long as the County is an Area of Critical State Concern)
12 • Third party may challenge the DCA's approval (only as long as the County is an Area of
13 Critical State Concern)
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15 If the Tier Maps are adopted into the comprehensive Plan the process will be:

- 16 • Planning Commission public hearing,
17 • Board of County Commission public hearing to transmit the change to the Department of
18 Community Affairs,
19 • DCA comments on the change within 60 days (note, this DCA involvement will continue
20 after the Keys are no longer an Area of Critical State Concern),
21 • Board of County Commission public hearing to consider the DCA comments and approve
22 the change.
23 • DCA approval of the Comprehensive Plan Amendment
24 • Third party may challenge the DCA's approval.
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26 It should be noted that there currently is a citizen initiative to amend the State's constitution such
27 that any amendment to the Comprehensive Plan will require a public referendum. If this becomes
28 the law, then corrections to individual lots could become exceedingly difficult for average
29 citizens or the staff attempting to base the maps on new environmental information such as
30 discovering that endangered species are nesting on the property.
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- 32 2. Maintains oversight by the DCA if the Keys are de-designated. Currently, the DCA has authority
33 to deny any amendment to the Tier Maps whether they are in the Land Development Regulations
34 and/or in the Comprehensive Plan. If the Keys are de-designated, then the DCA oversight will be
35 eliminated for changes to the Land Development Regulations but will be retained for changes to
36 the Comprehensive Plan. Thus, if the Tier Maps are adopted into the Comprehensive Plan, there
37 will be some DCA oversight to check any changes that may not be consistent with the technical
38 criteria.
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- 40 3. Timing with the current challenge to the Tier Maps. The County Commission and the
41 Department of Community Affairs have approved the adoption of the Tier Maps into the Land
42 Development Regulations. However, this approval has been challenged and is scheduled to be
43 heard by a hearing officer in February, 2007. Part of the challenge is that the maps should be
44 changed in a number of spots. The commission may desire to delay the adoption of the Tier
45 Maps into the comprehensive plan until the current challenge is resolved.
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1 Additionally, it is possible that the adoption into the comprehensive plan could be challenged by
2 the same people that challenged the adoption into the Land Development Regulations and/or any
3 other person. Consequently, while the current challenge is only by “environmentalists”, it is
4 possible the adoption into the Comprehensive Plan could be challenged by “developers”.
5 Therefore, the whole issue could become very complex very quickly.
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- 7 4. The 147 changes referenced in BOCC Resolution 148-2006 will not have the full public notice
8 that normally would occur if individually processed as amendments. 137 go from Tier 1 to Tier 3
9 and are recommended by staff and were requested by the property owners. Ten (10) of the
10 changes go from Tier 3 to Tier 1 and were determined by staff to be errors and meet the criteria.
11 Four (4) of these parcels proposed for Tier 1 will not be impacted as they are currently developed.