

**DRAFT 5-18-07**  
**SUBJECT TO REVISION**

**MONROE COUNTY PLANNING DEPARTMENT**  
*We strive to be caring, professional and fair*

**STAFF REPORT**



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**TO: The Development Review Committee**

**FROM: Richard Jones, Senior Marine Planner**

**THROUGH: Aref Joulani, Sr. Dir., Planning and Environmental Resources**

**RE: AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS REGARDING RECREATIONAL AND COMMERCIAL WORKING WATERFRONTS**

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**MEETING DATE: May 21, 2007**

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**I. PROPOSED REVISIONS:**

The proposed changes to the Monroe County Land Development Regulations (LDR) are part of the implementation of a two-phase study of the state of the County's recreational and commercial working waterfronts and the development of strategies to help strengthen and preserve this critical sector of the County's economy and character. The County is experiencing the loss of recreational and commercial working waterfront and the loss of public access to the water due to the redevelopment of marine facilities, including, but not limited to marinas, boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage. These LDR amendments support and implement concurrently proposed changes to sections of the Monroe County 2010 Comprehensive Plan, specifically the Future Land Use, Conservation and Coastal Management Elements, to help preserve and strengthen the County's recreational and commercial working waterfronts.

**Petitioner:** The amendment is sponsored by the Monroe County Department of Marine Resources

**A. Area of land affected by the amendment**

The amendment affects all parcels within unincorporated Monroe County meeting the characteristics as delineated in the ordinance.

**B. Characteristics of the proposed amendment**

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2           The amendment defines terms related to the working waterfront and sets  
3 standards for preservation, including incentives and bonuses. Specific  
4 data and analysis is provided below.  
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6 **II.     BACKGROUND:**  
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8     On July 20, 2005 the Board of County Commissioners adopted Ordinance No. 017-2005  
9 deferring the acceptance of development applications for the redevelopment and  
10 conversion of marine facilities until land development regulations which protect the  
11 working waterfront are drafted.  
12

13     Ordinance No. 17-2005 directed staff to enter into an interlocal agreement with the  
14 South Florida Regional Planning Council to prepare a *Marine Management Strategic*  
15 *Plan*.  
16

17     The Board of County Commissioners adopted the *Marine Management Strategic Plan*  
18 on March 15, 2006.  
19

20     On September 30, 2006, the Board of County Commissioners directed staff to enter into  
21 an interlocal agreement with the South Florida Regional Planning Council to develop  
22 implementation strategies for the *Marine Management Strategic Plan* including a  
23 Working Waterfronts Preservation Master Plan, Marina Siting Plan, Comprehensive  
24 Plan Amendments and supporting Land Development Regulations, and a database of  
25 marine-related facilities.  
26

27 **III.    SUPPORT DATA AND ANALYSIS**  
28

29 **A.    Proposed Changes to Chapter 9.5, Article 1, Section 9.5-4, Definitions.**  
30

31           New or amended definitions are proposed for boatyard, commercial fishing,  
32 recreational and commercial working waterfronts, and water dependent and  
33 water related uses. These definitions provide clarification on terms used in  
34 policies throughout the Monroe County Comprehensive Plan and Land  
35 Development Regulations that protect uses pertinent to the County's  
36 character and economy, such as public access to navigable waters, marinas,  
37 and commercial fishing.  
38

39 **B.    Proposed Changes to Section 9.5-250 Maritime Industries District (MI).**  
40

41           Changes to this district have been made to meet the goal of preserving  
42 maritime industries along the waterfront. As of right uses will include  
43 employee housing, and small hotels will be allowed as a major conditional  
44 use in this land use district. A Marina Siting Plan will be adopted by

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1 reference through the Monroe County Master Plan. Marinas may be built or  
2 redeveloped as a major conditional use if all criteria set forth in the Marina  
3 Siting Plan has been met.  
4

5 **C. Proposed Changes to Section 9.5, Article 7, Division 3, including new**  
6 **Section 9.5-272, Recreational and Commercial Working Waterfronts**  
7

8 This new section of the Land Development Regulations is consistent with  
9 Goal 219, Community Character and Preservation of Working Waterfront, of  
10 the Monroe County 2010 Comprehensive Plan. The new regulations set forth  
11 the amount of allowable redevelopment of water-dependent uses within  
12 unincorporated Monroe County. The regulations also provide incentives,  
13 methods of alternative compliance, and exemptions providing flexibility to  
14 property owners.  
15

16 **D. Proposed Changes to Chapter 9.5, Article 5, Section 9.5-143,**  
17 **Nonconforming Uses.**  
18

19 New language clarifies that within commercial fishing land use districts,  
20 CFA, CFV, and CFSD, non-conforming uses may be re-established, which  
21 allows flexibility within these land use districts.  
22

23 **E. Proposed Changes to Chapter 9.5, Article 5, Section 9.5-144,**  
24 **Nonconforming Structures**  
25

26 New language allows for flexibility in the rebuilding of nonconforming  
27 structures in land use districts primarily devoted to water dependent uses.  
28 This policy is consistent with the goal of protecting Monroe County's  
29 working waterfront and commercial fishing industry, which are valuable to  
30 the County's character and economy.  
31

32 **F. Consistency with the Comprehensive Plan.**  
33

34 The proposed amendments to the LDR further the following policy direction  
35 provided within the 2010 Comprehensive Plan:  
36

- 37 1. Goal 212 of the 2010 Comprehensive Plan directs the County to  
38 prioritize shoreline land uses and establish criteria for shoreline  
39 development in order to preserve and enhance coastal resources and to  
40 ensure the continued economic viability of the County.  
41
- 42 2. Goal 213 of the 2010 Comprehensive Plan directs the County to ensure  
43 adequate public access to the beach or shoreline.  
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3. Objective 502.1 of the 2010 Comprehensive Plan directs the County to promote the preservation and enhancement of the existing ports and port related activities.

**G. Public Welfare Issues.**

Monroe County’s recreational and commercial working waterfronts provide practical, logistical, and economic benefit to the public and to the County’s economy and character. These amendments promote public welfare by meeting the goal of preserving community character and working waterfronts while providing property owners with flexibility in the intensity and types of uses allowed.

**H. Benefits to Property Owners:**

The amendments will enable affected property owners to preserve the uses associated with the recreational and commercial working waterfront by making it possible to develop additional income producing uses and/or increase the intensity of use to maintain economic viability.

**IV. CONCLUSIONS (circle one):**

1. The proposed amendment is consistent with the criteria in Section 9.5-511 of the Monroe County Code for justifying decisions to amend the land use district text.

**YES**                      NO

2. The proposed amendment is consistent with the comprehensive plan.

**YES**                      NO

3. The proposed amendment is in the interest of public welfare.

**YES**                      NO

4. Land owners within the area affected by the proposed text amendment will derive benefits.

**YES**                      NO

**V. RECOMMENDATION of the Development Review Committee (circle one):**

**APPROVE**    **DENY**

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**ORDINANCE NO. \_\_\_\_ -- 2007**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS REGARDING RECREATIONAL AND COMMERCIAL WORKING WATERFRONTS; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING EFFECTIVE DATE; PROVIDING FOR INCORPORATION IN THE MONROE COUNTY CODE OF ORDINANCES**

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**WHEREAS**, Monroe County's working waterfronts provide practical, logistical, and economic benefit to the public and to the County's economy and character, and;

**WHEREAS**, Monroe County is experiencing the loss of recreational and commercial working waterfront and the loss of public access to the water due to the redevelopment of marine facilities, including, but not limited to marinas, boatyards, wet and dry storage, fish houses and commercial fishing vessel dockage, at an unprecedented rate, and;

**WHEREAS**, it is important to preserve an acceptable level of working waterfront while still allowing an appropriate mix of water dependent and non-water dependent uses, and;

**WHEREAS**, fundamental elements of working waterfronts should be preserved to ensure that the ongoing need for working waterfronts is not exacerbated by non-water dependent development or redevelopment of water dependent facilities currently provided in numerous land use districts and distributed throughout Monroe County, and;

**WHEREAS**, the Board of County Commissioners makes the following Findings of Facts:

1. On July 20, 2005 the Board of County Commissioners adopted Ordinance No. 017-2005 deferring the acceptance of development applications for the redevelopment and conversion of marine facilities until land development regulations which protect the working waterfront are drafted; and
2. Ordinance No. 17-2005 directed staff to enter into an interlocal agreement with the South Florida Regional Planning Council to prepare a *Marine Management Strategic Plan*

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3. The Board of County Commissioners adopted the *Marine Management Strategic Plan* on March 15, 2006.
4. On September 30, 2006, the Board of County Commissioners directed staff to enter into an interlocal agreement with the South Florida Regional Planning Council to develop implementation strategies for the *Marine Management Strategic Plan* including a Working Waterfronts Preservation Master Plan, Marina Siting Plan, Comprehensive Development Master Plan Amendments and supporting Land Development Regulations, and a database of marine-related facilities.
5. On March 21 and April 3, 2007 the Board of County Commission heard progress reports on the development of the proposed amendments, paying particular attention to the concept of “no net loss.”

**WHEREAS**, if the land development regulations are not amended to control certain conversions and redevelopments, future losses of working waterfront and public access will negatively affect the economy and bring an end to critical marine services (e.g. boat yards), marinas that are available to the public, and traditional trades associated with commercial fishing; and

**WHEREAS**, Goal 212 of the 2010 Comprehensive Development Master Plan directs the County to prioritize shoreline land uses and establish criteria for shoreline development in order to preserve and enhance coastal resources and to ensure the continued economic viability of the County; and

**WHEREAS**, Goal 213 of the 2010 Comprehensive Development Master Plan directs the County to ensure adequate public access to the beach or shoreline; and

**WHEREAS**, Objective 502.1 of the 2010 Comprehensive Development Master Plan directs the County to promote the preservation and enhancement of the existing ports and port related activities, and;

**WHEREAS**, the Board of County Commissioners has amended the Monroe County Comprehensive Development Master Plan to outline policies protective of the working waterfront; and therefore, the Land Development Regulations must also be amended to remain consistent, and;

**WHEREAS**, the Board of County Commissioners has considered the comments of the public, recommendations of the Planning Commission, recommendations of staff and other matters, and;

**NOW, THEREFORE**, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THE FOLLOWING: that the

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preceding findings support its decision to approve the amendments to the Monroe County Land Development Regulations as provided herein:

**Section 1.**

**Amend Chapter 9.5, Article 1, Section 9.5-4, Definitions, as follows:**

(B-7) Boatyard means a boating or harbor facility located on or having direct access to navigable water for building, maintaining, and performing extensive repair on boats and small ships, marine engines and equipment. A boatyard shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway or large capacity lifts used to haul out boats for maintenance or repair.

(C-12) Commercial fishing means the catching, landing, processing or packaging of seafood for commercial purposes, including the mooring and docking of boats and/or the storage of traps and other fishing equipment and charter boat uses and spot diving uses. Dockage associated with commercial fishing shall be distinguished from a marina by the nature of the docking and/or mooring facilities, which are traditionally provided for commercial fishing vessels as a function of the commercial fishing operation.

(R-5) Recreational and commercial working waterfronts means a parcel or parcels of real property that provide access for water dependent commercial activities, including hotels and motels as defined in 9.5-4(H-7), or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water. Seaports are excluded from the definition. This definition is consistent with the definition of Recreational and Commercial Working Waterfronts found in Chapter 342.07 Florida Statutes.

(W-7) ~~Water dependent facility means a use that is functionally dependent on actual access to open waters.~~ Water dependent uses are maritime activities that are carried out only on, in, or adjacent to water areas because they require direct access to water. Water dependent uses include, but are not limited to, fish houses, boat barns, boat yards, ship building, boat repair and storage (other than for trailer-able boats), marinas, ports, ferry terminals, commercial fishing, fishing trap storage and manufacturing, and water dependent utilities .

(W-11) Water related uses are activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with

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water dependent or waterway uses. Water related uses include, but are not limited to, boat storage (other than boat barns), fishing trap storage and manufacturing, tropical fish collection and sales and aquaria, ship stores, bait and tackle stores, and dive shops.

**Section 2.**

**Amend Sec. 9.5-250. Maritime Industries District (MI) as follows:**

- a) The following uses are permitted as of right in the Maritime Industries District:
- (1) Boat building, repair and storage;
  - (2) Commercial retail uses of less than five thousand (5,000) square feet of floor area;
  - (3) Office uses of less than five thousand (5,000) square feet of floor area;
  - (4) Light and heavy industrial uses;
  - (5) Commercial apartments involving less than six (6) dwelling units, but tourist housing uses, vacation rental use, of commercial apartments is prohibited;
  - (6) Employee housing;
  - ~~(6)~~ (7) Commercial fishing;
  - ~~(7)~~ (8) Manufacture, assembly, repair, maintenance and storage of traps, nets and other fishing equipment;
  - ~~(8)~~ (9) Institutional uses;
  - ~~(9)~~ (10) Public buildings and uses;
  - ~~(10)~~ (11) Accessory uses;
  - ~~(11)~~ (12) Vacation rental use of any nonconforming dwelling units if a special vacation rental permit is obtained under the regulations established in Code section 9.5-534.
  - ~~(12)~~ (13) Replacement of an existing antenna-supporting structure pursuant to article VII, division 16, section 9.5-434.5(b) "Replacement of an existing antenna-supporting structure."
  - ~~(13)~~ (14) Collocations on existing antenna-supporting structures, pursuant to article VII, division 16, section 9.5-434.5(c) "Collocations on an existing antenna-supporting structure."
  - ~~(14)~~ (15) Attached wireless communications facilities, as accessory uses, pursuant to article VII, division 16, section 9.5-434.5(d) "Attached wireless communications facilities."
  - ~~(15)~~ (16) Stealth wireless communications facilities, as accessory uses, pursuant to article VII, division 16, section 9.5-434.5(e) "Stealth wireless communications facilities."
  - ~~(16)~~ (17) Satellite earth stations, as accessory uses, pursuant to Article VII, Division 16, Section 9.5-434.5(f) "Satellite earth stations."

- (b) The following uses are permitted as minor conditional uses in the Maritime Industries District, subject to the standards and procedures set forth in article III, division 3:

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(1) Commercial apartments involving more than six (6) dwelling units provided that:

- a. The hours of operation of the commercial uses proposed in conjunction with the apartments are compatible with residential uses; and
- b. Access to U.S. 1 is by way of:
  - (i) An existing curb cut;
  - (ii) A signalized intersection; or
  - (iii) A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;
- c. Tourist housing uses, including vacation rental use of commercial apartments is prohibited.

~~(2) Hotels of fewer than fifty (50) rooms, provided that:~~

- ~~a. The use is compatible with established land uses in the immediate vicinity; and~~
- ~~b. One (1) or more of the following amenities are available to guests:
  - ~~(i) Swimming pool;~~
  - ~~(ii) Marina; and~~
  - ~~(iii) Tennis courts.~~~~

~~(3)(2) New antenna-supporting structures, pursuant to article VII, division 16, section 9.5-434.5(a) "New antenna-supporting structures."~~

(c) The following uses are permitted as major conditional uses in the Maritime Industries District, subject to the standards and procedures set forth in article III, division 3:

~~(1) Hotels providing fifty (50) or more rooms, provided that:~~

- ~~a. The hotel has restaurant facilities on or adjacent to the premises; and~~
- ~~b. Access to U.S. 1 is by way of:
  - ~~(i) An existing curb cut;~~
  - ~~(ii) A signalized intersection; or~~
  - ~~(iii) A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;~~~~

(1) Hotels of fewer than fifty (50) rooms, provided that:

- a. The use is compatible with established land uses in the immediate vicinity; and
- b. The historic water dependent uses are maintained.

(2) Marinas, provided that:

- a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide; The parcel proposed for development or expansion has met the criteria in the Monroe County Marina Siting Plan.

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**Section 3.**

**Amend Chapter 9.5, Article 7, Division 3 to include new Section 9.5-272, Recreational and Commercial Working Waterfronts, as follows:**

**Sec. 9.5-272. Recreational and Commercial Working Waterfronts**

(a) Purpose and Intent. The purpose of this section, consistent with Goal 219 of the Comprehensive Development Master Plan, is to ensure that the need for recreational and commercial working waterfronts is not exacerbated by non-water dependent development or conversion of water-dependent facilities and services. The intent of this section is to protect the existing recreational and commercial working waterfront as well as encourage the preservation and development of working waterfronts.

(b) Applicability. Properties, in any land use district, which have existing recreational and commercial working waterfront uses either as a principal use or accessory use, shall be subject to the following preservation restrictions.

1. Those commercial properties whose principal use falls into a category of marina, boatyard or commercial fishing shall be limited in the re-development of the property, or development of new uses, which does not meet the definition of water dependent to no more than 50 percent of the total land use intensity. The 50 percent limit may, however be exceeded in accordance with any of the below applicable incentives, methods of alternative compliance, or exemptions. The following additional restrictions shall apply:
  - a. For marinas- at least 50 percent of the property's development potential shall be preserved for marina functions, services, and facilities. In addition, no more than 50 percent of the marina docking facilities, which are currently open to the public may be converted to exclusive use (not open to the public).
  - b. For boatyards- at least 50 percent of the property's development potential shall be preserved for boatyard functions, services, and facilities.
  - c. For commercial fishing- at least 50 percent of the property's development potential shall be preserved for commercial fishing functions, services, and facilities.
2. Those commercial properties whose principal use is other than a marina, boatyard or commercial fishing but which have an accessory use of a marina, boatyard, or commercial fishing shall preserve at least 50 percent of that working waterfront element or elements. No more than 50 percent of the intensity of the working waterfront element/s shall be re-developed to non-water dependent use/s.

(c) Incentives. In order to allow flexibility for economic change and to provide for appropriate mixed use while preserving the working waterfront, the following incentives

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are provided. These incentives shall apply to commercial properties with a principal use which falls into a category of marina, boatyard or commercial fishing as long as all other limitations and restrictions specified in the land use district are met.

- 1) Notwithstanding the density limitations in section 9.5-261, the owner of a parcel of land shall be allowed a 30 percent intensity bonus provided that 70 percent of the land use intensity is preserved as a marina, boatyard, or commercial fishing operation.
- 2) A property owner shall be allowed an additional 10 percent intensity bonus for either of the following:
  - a) Providing a dedicated easement for public use (non-vehicular) that fronts the water for the purpose of providing a view shed.
  - b) Providing a dedicated boat ramp for public use.

(d) Alternative compliance.

- 1) Redevelopment which results in the reduction of marina, boatyard, or commercial fishing intensity below the 50 percent threshold shall be allowed, provided that the difference in intensity is transferred to another suitable site within the same sub-area of the Keys (upper, middle, or lower).
- 2) Payment into a Working Waterfront Mitigation Fund may be accepted as mitigation for the reduction in intensity of any marina, boatyard, or commercial fishing operation below the 50 percent threshold.
- 2) Such other alternatives as approved by the Board of County Commission.

(e) Exemptions

- 1) A property owner may petition to convert from one type of working waterfront to another (marina, boatyard, or commercial fishing) if it can be demonstrated that the existing working waterfront type is no longer economically viable.
- 2) A property owner shall be exempt from the above restrictions if application of the restrictions would produce a result inconsistent with the plan or the purpose and intent of this section.

**Section 4.**

**Amend Chapter 9.5, Article 5, Section 9.5-143, Nonconforming Uses, as follows:**

9.5-143(f)(3). ~~Damage or destruction in commercial fishing districts (CFA, CFV, and CFSD):~~ Nonconforming uses existing as of September 15, 1986, may be rebuilt even if one hundred (100) percent destroyed provided that they are rebuilt to preexisting use, building footprint and configuration without increase in density or intensity of use.  
Discontinuance or abandonment in commercial fishing districts (CFA, CFV, and CFSD): Nonconforming uses existing as of September 15, 1986 may be re-established if discontinued or abandoned for more than six (6) consecutive months, provided that the use is re-established as the same pre-existing use without increase in density or intensity of use.

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**Section 5.**

**Amend Chapter 9.5, Article 5, Section 9.5-144, Nonconforming Structures, as follows:**

9.5-144(e)(3). *Damage or destruction of nonconforming structures in the commercial fishing or maritime industrial districts (CFA, CFV, CFSD, MI):* Nonconforming structures in which commercial fishing or maritime industrial uses have been in continuous operation as of September 15, 1986 may be rebuilt even if one hundred (100) percent destroyed, provided that they are rebuilt in the same building footprint and configuration, and the pre-existing commercial fishing or maritime industrial use is re-established, provided that the structure complies with Division 6: Floodplain Management Standards and Regulations.

**Section 6. Severability**

If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance by the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

**Section 7. Conflicting Provisions.**

In the case of direct conflict between any provision of this ordinance and a portion of any appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

**Section 8. Transmittal.**

This ordinance shall be transmitted 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 and as required by F.S. 380.05(6) and (11).

**Section 9. Filing.**

This ordinance shall be filed in the Office of the Secretary of 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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**Section 10. Effective Date.**

This ordinance shall become effective as provided by law and stated above. Where Comprehensive Development Master Plan amendments may be required in order for any part of this ordinance to be deemed consistent with the Comprehensive Plan, the effective date of such part shall be as of the effective date of the required Comprehensive Plan amendment and as otherwise required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2007.

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

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Mayor Mario DiGennaro

(SEAL)  
ATTEST: DANNY L. KOLHAGE, CLERK

\_\_\_\_\_  
APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney