



**FLORIDA DEPARTMENT *of*
ECONOMIC OPPORTUNITY**

2020

Florida Keys Area of Critical State Concern Annual Report



**Division of Community
Development**
Areas of Critical State Concern Program

**Florida Keys Area of Critical State Concern
Annual Report: 2019-2020
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Tab 1

Ron DeSantis
GOVERNOR



Dane Eagle
EXECUTIVE DIRECTOR

November 30, 2020

The Honorable Ron DeSantis
Governor of Florida
The Capitol
Tallahassee, Florida 32399-0001

The Honorable Nikki Fried
Commissioner of Agriculture
The Capitol
Tallahassee, Florida 32399-0810

The Honorable Ashley Moody
Attorney General
The Capitol
Tallahassee, Florida 32399-1050

The Honorable Jimmy Patronis
Chief Financial Officer
The Capitol
Tallahassee, Florida 32399-0300

Dear Governor and Members of the Florida Administration Commission:

The Florida Department of Economic Opportunity is pleased to submit the 2020 Florida Keys Area of Critical State Concern Annual Report. Section 380.0552(4)(b), Florida Statutes, requires the agency to prepare a report that describes the progress of the Florida Keys Area of Critical State Concern toward completing each local government's work program tasks. The work program tasks addressed in this report, adopted by administrative rule for Monroe County, the Village of Islamorada, and the City of Marathon, detail the requirements of each local government to achieve environmental and water quality improvements as well as goals for land acquisition and hurricane evacuation.

The Florida Department of Economic Opportunity appreciates the efforts of these local governments and looks forward to continuing our cooperative relationship with the communities in the Florida Keys to achieve the goals of the work programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Dane Eagle".

Dane Eagle

DE/js

cc: The Honorable Heather Carruthers, Mayor, Monroe County
The Honorable Steve Cook, Mayor, City of Marathon
The Honorable Mike Forster, Mayor, Islamorada, Village of Islands

EXECUTIVE SUMMARY

Section 380.05, Florida Statutes, allows the Florida Administration Commission to designate areas that contain resources of statewide significance as an Area of Critical State Concern. The Florida Keys Area of Critical State Concern, designated in 1974, includes the Village of Islamorada, the cities of Marathon, Layton, and Key Colony Beach, and unincorporated Monroe County. In 1984, the City of Key West was also designated an Area of Critical State Concern. Florida Administration Commission oversight includes authority to promulgate administrative rules that guide local government growth and development decisions related to comprehensive plans and land development regulations.

The Florida Department of Economic Opportunity (DEO) is required by section 380.0552(4)(b), Florida Statutes, to submit a written report annually to the Florida Administration Commission describing the progress of the Florida Keys Area of Critical State Concern toward completing the Work Program tasks “specified in commission rules.” This report covers July 1, 2019, through June 30, 2020, and summarizes the status of the Work Program tasks. The Work Program tasks became effective on June 17, 2011. Most tasks were scheduled to be completed by December 31, 2015. However, there are recurring tasks such as annually applying for land acquisition grant funding and wastewater infrastructure grants.

Each Work Program matrix found under Tab 3 of this report contains measurable actions with due dates. Specifically, each contains the following:

- Tasks;
- Status of each Work Program task in the third column as either “complete” or “incomplete” with tasks due this reporting period highlighted in yellow;
- Comments as to the extent to which these requirements have been met from the relevant local government;
- Documentation required; and
- Dates for completion.

During this reporting period:

- Marathon completed 80% of the tasks assigned in the Work Program.
- Monroe County completed 100% of the tasks assigned in the Work Program.
- Islamorada completed 100% of the tasks assigned in the Work Program.

The percentage of tasks completed is not cumulative and covers only the current reporting period.

Recommendations

DEO makes the following recommendations pursuant to section 380.0552(4)(b), Florida Statutes:

- (1) Accept the 2020 Annual Report for Monroe County, the City of Marathon, and the Village of Islamorada;
- (2) Continue the Florida Keys Area of Critical State Concern designation; and
- (3) Accept DEO's recommendation that progress toward accomplishing the strategies of the Work Program have been achieved for Monroe County, the City of Marathon, and the Village of Islamorada;

Tab 2

INTRODUCTION

Section 380.0552(4), Florida Statutes, directs the state land planning agency to submit a report to the Florida Administration Commission, describing in detail the progress of the Florida Keys Area of Critical State Concern toward accomplishing the tasks of the Work Program and to provide a recommendation as to whether or not progress toward accomplishing the tasks of the Work Program has been achieved.

This narrative provides an overview of this year's rule requirements and should be used in conjunction with the Florida Administration Commission's Matrix under Tab 3 to expedite review. The Matrix is the Florida Administration Commission Rule in a different format. It contains the status of each Work Program task in the third column as either "complete" or "incomplete" and the tasks due during this reporting period are highlighted in yellow. The Matrix includes comments and information submitted by the local governments.

HISTORY

In 1972, the Florida Legislature adopted the Environmental Land and Water Management Act, which provided the basis for the state to designate an Area of Critical State Concern. To be designated, an area must contain, or have a significant impact upon, environmental or natural resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources. Examples of resources of regional or statewide significance include: state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas. The Environmental Land and Water Management Act, adopted prior to the 1985 Growth Management Act, was written at a time when most local governments did not have programs and personnel to guide development in a manner that would ensure these resources would be protected.



[View of the Seven Mile Bridge from Pigeon Key \(Source: Florida Memory\)](#)

In 1975, the Florida Legislature designated the Florida Keys (Monroe County and its municipalities) as an Area of Critical State Concern. The Florida Keys received this designation due to the area's environmental sensitivity and mounting development pressures. The legislative intent was to establish a land use management system for the Florida Keys that would:

- Protect the natural environment and improve the near shore water quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;
- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing near places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.

In the early 1990s, Monroe County revised its Comprehensive Plan to be consistent with the 1985 Growth Management Act, which drew legal challenges from numerous parties and litigation lasting several years. In 1997, the Florida Administration Commission entered into a stipulated settlement agreement to resolve the litigation. The Florida Administration Commission adopted Rule 28-20, Florida Administrative Code, containing a Work Program, that when completed, would protect the environment, resolve challenges raised by the various parties, and ultimately, lead to the repeal of the designation. These administrative proceedings highlighted specific aspects of the Florida Keys ecosystem as having already exceeded the carrying capacity thresholds of the environment to sustain additional impacts from development. The declining water quality of the near shore environment due to a lack of central sewer facilities was of particular concern.

Since the Work Program began, progress toward completing tasks has resulted in the elimination of 23,000 septic tanks including 2,800 cesspits and the connection of more than 60,000 equivalent dwelling units (EDU). Stormwater outfalls that discharge directly to the ocean or gulf have been eliminated.

CANAL RESTORATION AND ADMINISTRATION COMMISSION RULE UPDATE

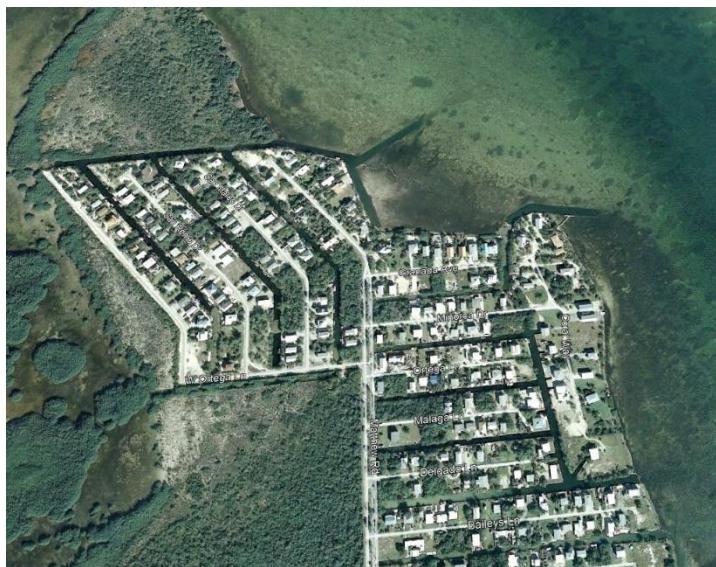
The Keys' \$1.2 billion marine-based tourism industry¹ is a strong economic engine for both local and state economies and relies almost entirely on clean waters. Most residential canals in the Keys were designed in a way that resulted in little or no tidal flushing. Canals that do not flush and have dead seaweed can lead to bacteria, viruses, noxious hydrogen sulfide, and methane gases.

Improvements in wastewater treatment and stormwater management have largely been completed but do not address all the water quality problems in the canals.

¹ National Marine Sanctuary Program, National Oceanic and Atmospheric Administration, National Ocean Service and US Department of Commerce. 2007. *Florida Keys National Marine Sanctuary Revised Management Plan*. <http://floridakeys.noaa.gov/mgmtplans/2007.html>

More than 300 of the Keys' 500 canals have "fair" or "poor" water quality. When the canals have poor water quality, this has a direct impact on the water quality of the water in the Gulf and the Atlantic. Periodic fish kills, dark water, the odor hydrogen sulfide (rotten eggs), and floating sludge are some of the sensory impacts of poor water quality in canals. The larger impact can be to health, habitat, and tourism.

In April 2019, Governor DeSantis announced a canal restoration initiative. As part of the initiative,



Representative sample of canals (Source: Google Earth)

the Governor directed the Florida Department of Economic Opportunity (DEO) to develop a Canal Restoration Work Program that will set a definitive timeline for canal restoration with essential milestones for the completion of the project. DEO worked with the local governments, state and federal agencies, citizen groups, and other stakeholders to develop rule language that was approved by the Administration Commission and adopted in 2020. The rules lay out a 10-year plan for restoration efforts consistent with the Governor's direction.

In addition to adding the new work program task to address canal restoration, the Administration Commission approved amending the existing language to remove completed work program tasks. The current rules for Monroe County, the City of Marathon, and the Village of Islamorada containing the Work Program are under Tab 5.

As part of the rule promulgation process, DEO held a rule development workshop and sought comments from the public. Two topics among the comments received are related to hurricane evacuation and water quality monitoring. A more detailed summary of the topics follows.

Hurricane Evacuation Comments

The Florida Keys are a chain of lushly vegetated tropical islands surrounded by clear shallow ocean waters teeming with sea life. The islands are connected by a narrow ribbon of U.S. Highway 1 stretching 112 miles and spanned by 19 miles of bridges. The highest point of elevation along these rocky islands is only 18 feet above sea level and there is no point that is more than four miles from water. The Florida Keys are isolated from the rest of the state and receive electricity and potable water from Florida City, located on the Florida mainland.

Access to and from the Keys is primarily by U.S. Highway 1. Evacuation of the Keys' population in advance of a hurricane strike is essential for public safety. No hurricane shelters are available in the Florida Keys for Category 3-5 hurricane storm events. A system of managed growth was developed to ensure the ability to evacuate within the 24-hour evacuation clearance time as required by section 380.0552(9)(a)2., Florida Statutes. To meet a 24-hour evacuation clearance time, a phased hurricane evacuation procedure was developed. The evacuation procedure is separated into two phases:

- Phase One: tourists, recreational vehicles, campgrounds, parks, hospitals, and individuals with special needs are evacuated 48 hours prior to an anticipated landfall of a Category 3 or higher hurricane.
- Phase Two: mobile home occupants are directed to evacuate 36 hours prior to anticipated landfall and permanent residents are directed to evacuate 24 hours prior to landfall.

As part of the overall evacuation strategy, the Florida Administration Commission adopted a building permit allocation system (BPAS) that caps the number of permits that can be issued for new residential structures. Based on existing infrastructure and evacuation strategies, computer modeling indicates that the projected maximum build out for the Florida Keys is the development of an additional 3,550 allocations beginning July 2013. A portion of these allocations have been set-aside for affordable housing.

The ten-year building permit allocation is due to expire in July 2023. The Florida Division of Emergency Management (DEM) is currently working to update the hurricane evacuation model for the entire state. DEM staff is coordinating with DEO staff on the timing of that update and its availability to perform modeling to advance a new ten-year allocation. The ten-year permit allocation system was designed to coordinate with the timing of the release of decennial census data. During the rule promulgation process, it became apparent that the COVID-19 pandemic may influence the 2020 Census and the timing of the data releases. Therefore, the update of the work program tasks for hurricane evacuation and a revised building permit allocation was deferred until there was clarity as to the effect of COVID-19 on the 2020 Census. As data gathering efforts in this area are finalized, the Department will bring recommendations with regard to updating the components of hurricane evacuation and building permit allocations.

Water Quality Monitoring

The environment and the economy are inextricably linked in the Florida Keys. Tourism is the primary economic engine in the Florida Keys. The latest estimates from the Monroe County Tourist Development Council indicate over \$2.4 billion was spent by over five million visitors translating to a \$1.8 billion economic impact. Clean water in the Keys is essential to maintaining a strong tourism base. Tourism represents 44% of all jobs in the Keys and is the largest employer in Monroe County. The cost of water quality improvements in the Keys are a small fraction of the long-term asset value that the natural resource provides to the economy of the Florida Keys.

State and federal agency partners, property owners, and community groups submitted comments concerning the use of shallow wells (80'-120') for injecting treated wastewater and stormwater. Comments generally referred to studies investigating shallow-well effluent transported through the porous limestone geology of the Florida Keys, the need for collaboration to establish monitoring criteria and further testing to track nutrients found in wastewater within nearshore and halo zones (within 500 meters from shore) and offshore barrier reef tracts.

The United States Environmental Protection Agency (EPA) received \$4 million for the South Florida Geographic Initiative, a million dollars more than last year. EPA received 40 proposals totaling \$13 million dollars for projects that support South Florida ecosystems including the Florida Keys and Florida Reef Tract. Included in those proposals were two complimentary proposals to examine the water quality questions raised during the rule promulgation process. EPA anticipates funding 10-15 project proposals in South Florida this year. DEO will be tracking this issue and staff will continue to update the Administration Commission in future reports.

Workforce Affordable Housing

As authorized on June 13, 2018, by the Florida Administration Commission, the municipalities of Marathon, Islamorada, and Key West amended their comprehensive plans each adding 300 workforce-affordable housing units. The allocations must be used for rental units and participants are required to commit to evacuating renters in the 48-hour window of evacuation. The amendments have been challenged in each jurisdiction. The three cases were combined and a hearing with the Florida Division of Administrative Hearings was held in December 2019. The Administrative Law Judge (ALJ) issued a final order on April 24, 2020. DEO remanded the case back to the Division of Administrative Hearings to address a single omission on a Finding of Fact and Conclusion of Law. The ALJ issued the Recommended Order on Remand on September 25, 2020. The next step in the process is for DEO to review the Recommended Order and issue a Final Order by December 24, 2020. In the meantime, Monroe County has begun exploring their options to adopt a comprehensive plan amendment to utilize 300 workforce-affordable housing units within its jurisdiction. DEO will update the Administration Commission in subsequent reports on the status of litigation or use of the units.

STATUS OF WASTEWATER CONNECTIONS

The Florida Administration Commission created the Work Program to focus on four general topics: water quality improvements, habitat protection, hurricane evacuation, and affordable housing. When the time frame for completing the Work Program, pursuant to Rule 28-20.110, Florida Administrative Code, expired in 2007, it was clear that the construction of central wastewater facilities and the upgrade of all on-site sewage treatment and disposal systems to advanced treatment standards would not be complete by the 2010 legislative deadline. As a result, the local governments in the Florida Keys were successful in obtaining a legislative change to provide a deadline extension from December 2010 to December 2015 for all sewage disposal systems to be upgraded to meet standards that were initially adopted by the Florida Legislature in 1999².

In 2011, the Florida Administration Commission adopted amended rules for Monroe County, the City of Marathon, and the Village of Islamorada, updating the list of unfinished tasks and



Key Largo Wastewater Treatment District Facility (Source: Barbara Powell)

establishing measurable wastewater construction priorities and dates. The adopted rules implemented Chapter 403, Florida Statutes, by adopting the wastewater treatment construction schedule provided for in section 403.086(10)(b), Florida Statutes.

We are approaching the five-year mark of the December 31, 2015 deadline, requiring package

plant and septic owners to upgrade their systems according to the standards in Sections 381.0065(3)(h) and (4)(l) and 403.086(10), Florida Statutes, or connect to central wastewater treatment facilities. Monroe County was able to expand service areas to include many more properties with septic systems that were not within the original service areas. The Florida Department of Environment Protection (DEP) has worked with nearly 250 package plant owners to upgrade or connect to central wastewater treatment facilities. DEP issued consent orders and are working on compliance plans with the three remaining package plant owners that have failed to meet the deadline.

² See Technical Appendix for standards in Sections 381.0065(3)(h) and (4)(l) and 403.086(10), Florida Statutes

Table 1. Wastewater Connection Progress

	Potential EDUs	Connected EDUs	Percent Connected
Big Coppitt Regional	1,743	1,597	92%
Bay Point	439	425	97%
Cudjoe Regional	9,335	6,920	74%
Marathon	11,300	11,200	99%
Duck Key Regional	1,488	1,451	98%
Key Largo Wastewater Treatment District	15,399	15,319	99%
Islamorada*	4,215	4,163	**99%

* Parcels not EDUs

** 99% if counting those in process



Old Seven Mile Bridge (Source: B. Powell)

STATUS OF LOCAL GOVERNMENT WORK PROGRAM JULY 1, 2019 – JUNE 30, 2020

The following pages provide an overview of the Work Program tasks, which were due for completion during the evaluation period (July 1, 2019 to June 30, 2020).

Work Program Tasks

- Monroe County, the City of Marathon, and the Village of Islamorada Work Programs are similar in that each local government is required to apply annually to federal or state agencies for funding to support needed wastewater infrastructure.
- All three Work Programs require the local government to identify funding in the local government's budget for wastewater needs.
- All three Work Programs contain a requirement for a recurring annual evaluation of wastewater infrastructure funding needs and a resolution requesting issuance of a portion of the \$200 million in bonds authorized by section 215.619, Florida Statutes.
- All three Work Programs require an annual evaluation of acquisition needs and applying to at least one land acquisition grant program.
- Marathon is required to annually apply for stormwater funding.

Islamorada

The Village of Islamorada has an annual allocation of 28 new residential building permits for a 10-year period beginning in 2013 (280 total). The Village distributed 22 market-rate allocations and 12 affordable allocations. The Village distributed five market-rate allocations through administrative relief and borrowed forward for additional affordable allocations. The Village completed 100% of the Work Program tasks scheduled for completion during this evaluation period. The Village applied for the Rebuild Florida Voluntary Buyout Program and received approval for \$208,052 to buy one property.



Islamorada Work Program Tasks (Rule 28-19.310, Florida Administrative Code)	Complete	Incomplete
Task 5(a)1: Apply for land acquisition funds.	X	
Task 5(b)1: Identify wastewater funding in the Capital Improvements Element.	X	
Task 5(b)4: Apply to state or federal government for wastewater grant funding.	X	

Wastewater Connection Progress

The Village of Islamorada adopted Resolution No. 20-05-38, approving an agreement with DEP, relating to the Florida Keys Stewardship Act funding for capital projects costs, including engineering, project management, and construction for the North Plantation Key pump station in the total amount of \$708,333. Approximately 99 percent of the potential wastewater connections in Islamorada have been made or are in process. The remaining 38 properties have active code compliance cases for failing to connect in the Village.

Marathon

The City of Marathon can annually allocate 30 new residential building permits for a ten-year period beginning in 2013 (300 total). The City distributed 30 market-rate allocations and three affordable allocations. Four of the market-rate allocations were from recaptured allocations. There are 26 allocations from the administrative relief pool allocated to affordable housing. The City completed 80 percent of the tasks scheduled for completion in the Work Program during this report period. The City of Marathon applied for the Rebuild Florida Voluntary Buyout Program and received approval for \$4.8 million, which will be utilized to purchase 17 properties.



Marathon Work Program Tasks (Rule 28-18.400, Florida Administrative Code)	Complete	Incomplete
Task 5(a)6: Apply for land acquisition grants.	X	
Task 5(b)1: Allocate funding for wastewater in the Capital Improvements Element.	X	
Task 5(b)3: Apply for state or federal wastewater funding.	X	
Task 5(d)1: Allocate funding for stormwater treatment facilities.	X	
Task 5(d)2: Apply to the South Florida Water Management District for stormwater grants.		X

Wastewater Connection Progress

The City of Marathon has connected 100 percent of potential customers to the regional systems, less 22 properties in code-compliance.

Stormwater Treatment Funding

The City of Marathon created a stormwater utility, which meets the city's needs without additional funds from state or federal sources.

Unincorporated Monroe County

Monroe County has an annual allocation of 197 new residential building permits from 2013 through 2023 (1,970 total). An amendment to their Comprehensive Plan was submitted to extend the Rate of Growth Ordinance (ROGO) timeframe by three years to 2026. Monroe County distributed 111 market-rate allocations. This past reporting year, 343 affordable allocations were allocated or reserved for future projects in Monroe County. The County completed 100 percent of the tasks assigned in the Work Program for this evaluation period.



From July 13, 2019, to July 12, 2020, the Monroe County Land Authority, Monroe County Board of County Commissioners, and the Trustees of the Internal Improvement Trust Fund acquired 101 parcels (91.4 acres) at a cost of \$4,191,195. The County allocated \$3.2 million in wastewater funding during the reporting period.

Monroe County Work Program Tasks (Rule 28-20.140, Florida Administrative Code)	Complete	Incomplete
Task 5(a)7: Report on efforts to acquire land and fund balances	X	
Task 5(a)10: Apply annually for land acquisition funding	X	
Task 5(b)1: Allocate wastewater funding	X	
Task 5(b)3: Request Everglades bonds issuance	X	
Task 5(b)5: Apply for wastewater grant funding	X	

Wastewater Connection Progress

The Cudjoe Regional Wastewater Plant was the final plant and collection facility to be built in the Keys. The connection rate for customers on the Cudjoe plant for this reporting period is 74 percent. This is up from 68 percent during the last reporting period. The County is moving forward with enforcement measures. A total of 1,684 parcels received a 2nd reminder notice to connect. Reminder notifications were mailed via certified mail on July 28, 2020, and parcels are expected to be referred to code enforcement.

RECOMMENDATIONS

DEO recommends finding that Monroe County, the City of Marathon, and the Village of Islamorada have made progress toward accomplishing the Work Program tasks as specified in the Florida Administration Commission rules.

Therefore, in accordance with its statutory charge found in section 380.0552(4)(b), Florida Statutes, DEO recommends the following actions:

- (1) Accept the 2020 Annual Report for Monroe County, the City of Marathon, and the Village of Islamorada;
- (2) Continue the Florida Keys Area of Critical State Concern designation; and
- (3) Accept DEO's recommendation that progress toward accomplishing the strategies of the Work Program has been achieved for Monroe County, the City of Marathon, and the Village of Islamorada;

Tab 3

Village of Islamorada

		Status	Islamorada Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-19.310, F.A.C.	Achieved/Not Achieved			
1	(5)(a) Carrying Capacity Study Implementation.				
2	1. By July 1, 2011 and each July 1 thereafter, Islamorada shall evaluate its land acquisition needs and state and federal funding opportunities and apply to at least one state or federal land acquisition grant program.	Complete	CDBG-DR Voluntary Home Buyout Program application/approval.	July 1, 2020	
3	2. By July 1, 2012, Islamorada shall enter into a memorandum of understanding with the state land planning agency ¹ , Division of Emergency Management, Marathon, Monroe, Key West, Key Colony Beach, and Layton after a notice, public workshop and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the agency to accurately depict evacuation clearance times for the population of the Florida Keys.	Complete		July 1, 2012	
4	3. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding. Islamorada and the state land planning agency ¹ shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities Survey, Bureau of Business and Economic Research, and other studies). Islamorada shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.	Complete		July 1, 2012	
5	4. By July 1, 2012, Islamorada shall complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the state land planning agency ¹ , Monroe County and each municipality in the Keys.	Complete		July 1, 2012	
6	5. By July 1, 2012, the state land planning agency ¹ (agency) shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The agency will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24-hour evacuation clearance time. If necessary, state land planning agency shall work with each local government to amend the Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.	Complete		July 1, 2012	
7	6. By July 1, 2013, based on the state land planning agency's ¹ recommendations, Islamorada shall amend the current building permit allocation system (BPAS in the Comprehensive Plan and Land Development Regulations) based on infrastructure availability, level of service standards, environmental carrying capacity constraints, and hurricane evacuation clearance time.	Complete		July 1, 2013	Yes
8	By March 31, 2012, the Area of Critical State Concern staff shall amend the agendas for the Hurricane Evacuation Clearance Modeling Workshops to include the potential for future transient allocations and their impact on hurricane evacuation clearance times. (January 18, 2012 Administration Commission Action)	Complete			

Village of Islamorada

		Status	Islamorada Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-19.310, F.A.C.	Achieved/Not Achieved			
9	(5)(b) Wastewater Implementation.				
10	1. Beginning July 1, 2011 and each July 1 thereafter, Islamorada shall identify any funding for wastewater implementation. Islamorada shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.	Complete	Five-year Capital Improvement Program approved each year through the adoption of the annual budget includes wastewater system needs.	July 1, 2020	2011-139 LOF, removed the requirement that the capital improvement update be an amendment to the comprehensive plan
11	2. By December 1, 2013, Islamorada shall provide a final determination of non-service areas requiring upgrade to meet Sections 381.0065(4)(l) and 403.086(10), F.S., wastewater treatment and disposal standards. This shall be in the form of a resolution including a map of the non-service areas.	Complete		December 1, 2013	
12	3. By December 1, 2013, Islamorada shall work with the owners of wastewater facilities and on site systems throughout the Village and the Department of Environmental Protection (DEP) and the Department of Health (DOH) to fulfill the requirements of Sections 381.0065(3)(h) and (4)(l) and 403.086(10), F.S., regarding implementation of wastewater treatment and disposal systems. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet 2015 treatment and disposal standards.	Complete		December 1, 2013	
13	4. By July 1, 2011 and by July 1 of each year thereafter, Islamorada shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.	Complete	See attached summary of funding application and approval.	July 1, 2020	
14	5. By September 1, 2011, Islamorada shall develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities.	Complete		September 1, 2011	
15	6. By July 1, 2011 and each July 1 thereafter through 2013, Islamorada shall annually draft a resolution requesting the issuance of a portion of the \$200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.	Complete		July 1, 2013	
16	7. By July 1, 2011 and each July 1 thereafter through 2013, Islamorada shall develop a mechanism to provide accurate and timely information and establish Islamorada's annual funding allocations necessary to provide unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.	Complete		July 1, 2013	
17	8. By December 1, 2013, Islamorada shall provide a report of addresses and the property appraiser's parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department, Department of Environmental Protection and the Department of Economic Opportunity1. This report shall describe the status of Islamorada's enforcement action and provide the circumstances of why enforcement may or may not have been initiated.	Complete		December 1, 2013	
18	(5)(c) Wastewater Project Implementation.				
19	1. By June 1, 2011, Islamorada shall provide a wastewater financing plan to the Department of Economic Opportunity1 and Administration Commission.	Complete		June 1, 2011	

Village of Islamorada

		Status	Islamorada Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-19.310, F.A.C.	Achieved/Not Achieved			
20	(5)(c) Wastewater Project Implementation.				
21	2. By July 1, 2011, Islamorada shall conclude negotiations with Key Largo Wastewater Treatment District for treatment capacity.	Complete		July 1, 2011	
22	3. By July 1, 2011, Islamorada shall advertise for proposal for design build operate finance construction of Village-wide wastewater system.	Complete		July 1, 2011	
23	4. By July 1, 2011 submit a copy of contract agreement with Key Largo Wastewater District documenting acceptance of effluent or alternative plan with construction of wastewater treatment plants in Village that ensures completion and connection of customers by December 2015.	Complete		July 1, 2011	
24	5. By July 1, 2011, Islamorada shall make available to its customers an additional 700 connections (Phase II) to the North Plantation Key Wastewater Treatment Plant (WWTP).	Complete		July 1, 2011	
25	6. By September 1, 2011, Islamorada shall select the design build operate finance contractor for the Village-wide wastewater system.	Complete		September 1, 2011	
26	(5)(c) Wastewater Project Implementation.				
27	7. By October 1, 2011, Islamorada shall submit a wastewater construction status report to the Department of Economic Opportunity1 and the Administration Commission which includes substantial completion of construction prior to January 1, 2015 and final completion prior to July 1, 2015.	Complete		October 1, 2011	
28	By January 31, 2012, Islamorada shall submit a wastewater construction status report to the Department of Economic Opportunity1 and the Administration Commission which includes substantial completion of construction prior to January 1, 2015 and final completion prior to July 1, 2015. (January 18, 2012 Administration Commission Action)	Complete		January 31, 2012	
29	8. By September 1, 2013, Islamorada shall complete final design of the Village-wide wastewater system.	Complete		September 1, 2013	
30	9. By December 1, 2013, Islamorada shall commence construction of the Village-wide wastewater system.	Complete		December 1, 2013	
31	10. By June 1, 2014, Islamorada shall make available to its customers 25% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.	Complete		June 1, 2014	
32	11. By December 1, 2014, Islamorada shall make available to its customers 50% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.	Complete		December 1, 2014	
33	12. By June 1, 2015, Islamorada shall make available to its customers 75% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.	Complete		June 1, 2015	
34	13. By December 1, 2015, Islamorada shall make available to its customers 100% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.	Complete		December 1, 2015	

City of Marathon

		Status	Marathon Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-18.400, F.A.C.	Achieved/Not Achieved			
1	(5)(a) Carrying Capacity Study Implementation.				
2	1. By July 1, 2011, Marathon shall adopt a Comprehensive Plan Policy to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any city, county, state or federal agency. Marathon shall develop a mechanism to routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least 6 months prior to the deadline for administrative relief.	Complete		July 1, 2011	Yes
3	2. By July 1, 2011, Marathon shall adopt Land Development Regulations to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any city, county, state or federal agency.	Complete		July 1, 2011	
4	3. By July 1, 2011, Marathon shall amend the Comprehensive Plan to limit allocations into high quality tropical hardwood hammock.	Complete		July 1, 2011	Yes
5	4. By July 1, 2011, Marathon shall amend the Land Development Regulations to limit allocations into high quality tropical hardwood hammock.	Complete		July 1, 2011	
6	5. By July 1, 2011, Marathon shall adopt a Comprehensive Plan Policy discouraging private applications for future land use map amendments which increase allowable density/intensity on lands in the Florida Keys.	Complete		July 1, 2011	Yes
7	6. By July 1, 2011, and each July thereafter, Marathon shall evaluate its land acquisition needs and state and federal funding opportunities and apply annually to at least one state or federal land acquisition grant program.	Complete	CDBG-DR Voluntary Home Buyout Program application/approval.	July 1, 2020	
8	7. By July 1, 2012, Marathon shall enter into a memorandum of understanding with the Department of Economic Opportunity4, Division of Emergency Management, Monroe County, Islamorada, Key West, Key Colony Beach, and Layton after a notice and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the Department of Economic Opportunity to accurately depict evacuation clearance times for the population of the Florida Keys.	Complete		July 1, 2012	
9	8. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding. Marathon and the Department of Community Affairs shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities Survey, Bureau of Business and Economic Research, and other studies). The City shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.	Complete			

City of Marathon

		Status	Marathon Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-18.400, F.A.C.	Achieved/Not Achieved			
10	(5)(a) Carrying Capacity Study Implementation.				
9	9. By December 1, 2012, July 1, 20121 Marathon shall complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the Department of Economic Opportunity4, Monroe County and each municipality in the Keys.	Complete		July 1, 2012	
11	10. By December 1, 2012, July 1, 20121 the Department of Economic Opportunity (agency) shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The agency will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24-hour hurricane evacuation clearance time. If necessary, the Department of Economic Opportunity4 shall work with each local government to amend the respective Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.	Complete		July 1, 2012	
12	11. By July 1, 2013, based on the Department of Economic Opportunity's4 recommendations, Marathon shall amend the current building permit allocation system (BPAS in the Comprehensive Plan and Land Development Regulations) based on infrastructure availability, level of service standards, environmental carrying capacity, and hurricane evacuation clearance time.	Complete		July 1, 2013	Yes
13	The City of Marathon may propose and adopt an amendment to their comprehensive plan to include a one-time allocation of 100 transient dwelling units. The plan amendment may also include an additional 100 units composed of units from the Administrative Relief pool and borrowing forward from the City's future allocations. (January 18, 2012 Administration Commission Action)	Complete			Yes
14	By March 31, 2012, the Area of Critical State Concern staff shall amend the agendas for the Hurricane Evacuation Clearance Modeling Workshops to include the potential for future transient allocations and their impact on hurricane evacuation clearance times. (January 18, 2012 Administration Commission Action)	Complete			
15	(5)(b) Wastewater Implementation.				
16	1. By July 1, 2011 and each July 1 thereafter, Marathon shall annually evaluate and allocate funding for wastewater implementation. Marathon shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.	Complete	The City has consistently sought and received state (Stewardship/Mayfield) and federal funds (FKWQIP) for wastewater.	July 1, 2020	2011-139 LOF, removed the requirement that the capital improvement update be an amendment to the comprehensive plan
17	2. December 1, 2013, Marathon shall work with the owners of wastewater facilities and onsite systems throughout the City and the Department of Environmental Protection (DEP) and the Department of Health (DOH) to fulfill the requirements of Sections 381.0065(3)(h) and (4)(l) and 403.086(10), F.S., regarding implementation of wastewater treatment and disposal. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet 2015 treatment and disposal requirements.	Complete		December 1, 2013	

City of Marathon

		Status	Marathon Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-18.400, F.A.C.	Achieved/Not Achieved			
20	(5)(b) Wastewater Implementation.				
18	3. By July 1, 2011, Marathon shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.	Complete	In 2019-2020 the City received \$1.245 M in FKWQIP money for wastewater projects and continued to utilize funds provided through Stewardship for stormwater projects	July 1, 2020	
19	4. By July 1, 2011, Marathon shall continue to develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement facilities.	*Complete		July 1, 2011	
21	5. By July 1, 2011 and each year through 2013, Marathon shall annually draft a resolution requesting the issuance of a portion of the \$200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.	Complete		July 1, 2013	
22	6. By July 1, 2011, Marathon shall develop a mechanism to provide accurate and timely information and establish Marathon's annual funding allocations necessary to provide evidence of unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.	Complete		July 1, 2011	
23	7. By December 1, 2012, Marathon shall provide a report of addresses and the property appraiser's parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department and the Department of Economic Opportunity ⁴ . This report shall describe the status of Marathon's enforcement action and provide the circumstances of why enforcement may or may not have been initiated.	Complete		December 1, 2012	
24	(5)(c) Wastewater Project Implementation.				
25	1. Sub area 1: Knight's Key.				
26	a. By July 1, 2011, Marathon shall secure plant site;	* see end note ²		July 1, 2011	
27	b. By December 1, 2011, Marathon shall construct Knight's Key Wastewater Plant;	* see end note ²		December 1, 2011	
28	c. By May 1, 2012, Marathon shall initiate connections; and	Complete		May 1, 2012	
29	d. By July 1, 2012, Marathon shall complete connections (100%).	* see end note ²		July 1, 2012	
30	2. Sub area 2: Boot Key (non-service area).				
31	By July 1, 2011, Marathon shall ensure completion of upgrade.	Complete		July 1, 2011	

City of Marathon

		Status	Marathon Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-18.400, F.A.C.	Achieved/Not Achieved			
32	3. Sub area 3: 11 Street – 39 Street (Vaca Key West).				
33	a. By July 1, 2011, Marathon shall complete construction of plant;	Complete		July 1, 2011	
34	b. By July 1, 2011, Marathon shall complete construction of collection system;	Complete		July 1, 2011	
35	c. By July 1, 2011, Marathon shall initiate connections; and	Complete		July 1, 2011	
24	(5)(c) Wastewater Project Implementation.				
36	3. Sub area 3: 11 Street – 39 Street (Vaca Key West).				
37	d. By July 1, 2012, Marathon shall complete connections (100%).	Complete		July 1, 2012	
38	4. Sub area 4: Gulfside 39 Street (Vaca Key Central).				
39	By July 1, 2013, Marathon shall complete connections (100%).	Complete		July 1, 2013	
40	5. Sub area 5: Little Venice (60 Street – Vaca Cut East).				
41	a. By July 1, 2012, Marathon shall complete construction of collection system;	Complete		July 1, 2012	
42	b. By July 1, 2012, Marathon shall initiate connections for Phase II;	Complete		July 1, 2012	
43	c. By July 1, 2013, Marathon shall complete connections (100%) for Phase II.	Complete		July 1, 2013	
44	6. Sub area 6-Vaca Cut-Coco Plum (Fat Key Deer West).				
45	By July 1, 2011, Marathon shall complete connections (100%).	Complete		July 1, 2011	

City of Marathon

		Status	Marathon Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-18.400, F.A.C.	Achieved/Not Achieved			
47	7. Sub area 7: Tom Harbor Bridge-Grassy Key.				
48	a. By July 1, 2012, Marathon shall complete construction of plant;	Complete		July 1, 2012	
49	b. By July 1, 2012, Marathon shall bid and award design of collection system;	Complete		July 1, 2012	
50	c. By July 1, 2012, Marathon shall complete construction of collection system; ³	Complete		July 1, 2012	
51	d. By July 1, 2012, Marathon shall initiate connections; and	Complete		July 1, 2012	
52	e. By July 1, 2013, Marathon shall complete connections (100%).	Complete		July 1, 2013	

City of Marathon

		Status	Marathon Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-18.400, F.A.C.	Achieved/Not Achieved			
53	(5)(d) Stormwater Treatment Facilities.				
54	1. Beginning July 1, 2011 and each July 1 thereafter Marathon shall annually evaluate and allocate funding for stormwater implementation. Marathon shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.	Complete	The City of Marathon established a Stormwater Utility to which it allocates operation and maintenance funds each year (approximately \$1.2M annually). A stormwater collection and conveyance system exists within the Streets of Marathon throughout the City.	July 1, 2020	
55	2. Beginning July 1, 2011 and each July 1 thereafter, Marathon shall annually apply for stormwater grants from the South Florida Water Management District.	Incomplete	The City of Marathon applied for funds through FEMA for stormwater repairs. We did not apply to the SFWMD this year.	July 1, 2020	
56	3. By July 1, 2011, complete Stormwater Treatment Facilities simultaneously with wastewater projects, including the direct outfall retrofits for 27th Street and 24th Street. Sub area 3: 11 Street – 37 Street (Vaca Key West)	Complete		July 1, 2011	
57	4. By July 1, 2012, complete Stormwater Treatment Facilities simultaneously with wastewater projects. Sub area 5: Little Venice (60 Street – Vaca Cut East).	Complete		July 1, 2012	
58	5. By July 1, 2012, complete Stormwater Treatment Facilities simultaneously with wastewater projects. Sub area 7: Tom Harbor Bridge-Grassy Key.	Complete		July 1, 2012	
59	6. By July 1, 2012, Marathon shall eliminate direct outfall retrofits for: 27th Street, Sombrero Islands, 24th Street, and 52nd Street.	Complete		July 1, 2012	

End Notes:

1) Technical correction: Dates inconsistent with the intent of the Administration Commission's direction to Monroe County (28-20.140) and Islamorada (28-19.310)

2) Due to legal circumstances beyond the City's control, a plant site was not secured at Knight's Key and the plant was not constructed. The City connected this service area through a force main to the Area 3 plant.

3) Corrects scriveners error in Rule 28-18(5)(c) 7. c., F.A.C.

Monroe County

		ACSC Status	Monroe Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-20.140, F.A.C.	Achieved/ Not Achieved			
1	(5)(a) Carrying Capacity Study Implementation.				
2	1. By July 1, 2012, Monroe County shall adopt the conservation planning mapping (the Tier Zoning Overlay Maps and System) into the Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee with the adjusted Tier boundaries.	Incomplete	<p>The County sent a letter to the Administration Commission requesting that Rule 28-20.140, F.A.C. be amended to remove the requirement to adopt the Tier Overlay Zoning Maps into the Comp Plan as an overlay to the Future Land Use Map (FLUM). The County also sent a letter to DEO requesting that Rule 28-20.140, F.A.C. be amended to not require adoption of the Tier Overlay Zoning Maps into the Comp Plan unless the County is recommending removal of the Area of Critical State Concern designation.</p> <p>On June 4, 2019, the Administration Commission authorized DEO to initiate rulemaking.</p> <p>Administration Commission published <i>Notice of Development of Proposed Rules and Negotiated Rulemaking</i> for Proposed Rule 28-20.140 on June 25, 2020, which included revising the timing of the adoption of the Tier Zoning Overlay Maps and System (<i>Prior to the County adopting a resolution recommending the removal of the designation of Monroe County as an Area of Critical State Concern, pursuant to Section 380.0552(4)(b)3, F.S., Monroe County shall adopt the conservation planning mapping (the Tier Zoning Overlay Maps and System) into the Comprehensive Plan as an overlay to the Future Land Use Map</i>).</p> <p>A Rule Development Workshop was held on July 10, 2020. The Cabinet Aides meeting was held on September 16, 2020. The Cabinet meeting was held on September 22, 2020, and the Administration Commission approved the rule language and the steps for adoption.</p>	July 1, 2012	Yes
3	2. By July 1, 2012, Monroe County shall adjust the Tier I and Tier IIIA (SPA) boundaries to more accurately reflect the criteria for that Tier as amended by Final Order DCA07-GM166 and implement the Florida Keys Carrying Capacity Study, utilizing the updated habitat data, and based upon the recommendations of the Tier Designation Review Committee Work Group.	Complete		July 1, 2012	
4	3. By July 1, 2012, Monroe County shall create Goal 106 to complete the 10 Year Work Program found in Rule 28-20.110, F.A.C., and to establish objectives to develop a build-out horizon in the Florida Keys and adopt conservation planning mapping into the Comprehensive Plan.	Complete		July 1, 2012	Yes
5	4. By July 1, 2012, Monroe County shall create Objective 106.2 to adopt conservation planning mapping (Tier Maps) into the Monroe Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee Work Group.	Complete		July 1, 2012	Yes
6	5. By July 1, 2012, Monroe County shall adopt Policy 106.2.1 to require the preparation of updated habitat data and establish a regular schedule for continued update to coincide with evaluation and appraisal report timelines.	Complete		July 1, 2012	Yes
7	6. By July 1, 2012, Monroe County shall adopt Policy 106.2.2 to establish the Tier Designation Work Group Review Committee to consist of representatives selected by the Department of Economic Opportunity from Monroe County, Florida Fish & Wildlife Conservation Commission, United States Fish & Wildlife Service, Department of Environmental Protection and environmental and other relevant interests. This Committee shall be tasked with the responsibility of Tier designation review utilizing the criteria for Tier placement and best available data to recommend amendments to ensure implementation of and adherence to the Florida Keys Carrying Capacity Study. These proposed amendments shall be recommended during 2009 and subsequently coincide with the Evaluation and Appraisal report timelines beginning with the second Evaluation and Appraisal review which follows the adoption of the revised Tier System and Maps as required above adopted in 2011. Each evaluation and appraisal report submitted following the 2011 evaluation and appraisal report shall also include an analysis and recommendations based upon the process described above.	Complete		July 1, 2012	Yes
8	7. By July 1, 2012 and each July thereafter, Monroe County and the Monroe County Land Authority shall submit a report annually to the Administration Commission on the land acquisition funding and efforts in the Florida Keys to purchase Tier I and Big Pine Key Tier II lands and the purchase of parcels where a Monroe County building permit allocation has been denied for four (4) years or more. The report shall include an identification of all sources of funds and assessment of fund balances within those sources available to the County and the Monroe County Land Authority.	Complete	<p>From July 13, 2019 to July 12, 2020, the Monroe County Land Authority (MCLA) acquired 23 parcels of conservation land designated either Tier 1 or Tier 2. The Monroe County Board of County Commissioners (BOCC) acquired either fee simple title or a less than fee interest in 30 parcels of density reduction land designated either Tier 1 or Tier 2. With assistance from the BOCC and MCLA, the Board of Trustees acquired 15 parcels of conservation land designated Tier 1. In addition to these property categories, MCLA also acquired 6 parcels of conservation land designated Tier 3 or 3A; the BOCC acquired either fee simple title or a less than fee interest in 25 parcels of density reduction land designated either Tier 3 or Tier 3A; and the Board of Trustees acquired 2 parcels of conservation land with no Tier designation in Marathon. The total of all types of conservation and density reduction land purchased by MCLA, the BOCC, and the Board of Trustees was 101 parcels (91.4 acres) at a cost of \$4,191,195. There were no applicants for Administrative Relief.</p>	July 1, 2020	No

Monroe County

		ACSC Status	Monroe Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-20.140, F.A.C.	Achieved/ Not Achieved			
9	(5)(a) Carrying Capacity Study Implementation.				
10	8. By July 1, 2012, Monroe County shall adopt Land Development Regulations to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas or Tier I lands unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any county, state, federal or any private entity. The County shall develop a mechanism to routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least 6 months prior to the deadline for administrative relief.	Complete		July 1, 2012	
11	9. By July 1, 2012, in order to implement the Florida Keys Carrying Capacity Study, Monroe County shall adopt a Comprehensive Plan Policy to discourage private applications for future land use changes which increase allowable density/intensity.	Complete		July 1, 2012	Yes
12	10. By July 1, 2011, Monroe County shall evaluate its land acquisition needs and state and federal funding opportunities and apply annually to at least one state or federal land acquisition grant program.	Complete	On July 2, 2020, the Monroe County Land Authority (MCLA) applied for a federal land acquisition grant from the US Army Corps of Engineers through the Keys Restoration Fund in the amount of \$37,033.50. Pursuant to a Memorandum of Agreement with the Florida Department of Environmental Protection (DEP), the Monroe County Board of County Commissioners (BOCC) and MCLA have been leveraging local funds by assisting DEP with State Florida Forever land acquisitions. From July 13, 2019 to July 12, 2020, this partnership resulted in the State's purchase of more than \$1 million of Florida Forever land.	July 1, 2020	
13	11. By July 1, 2012, Monroe County shall enter into a memorandum of understanding with the Department of Economic Opportunity4 (agency), Division of Emergency Management, Marathon, Islamorada, Key West, Key Colony Beach, and Layton after a notice and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the agency to accurately depict evacuation clearance times for the population of the Florida Keys.	Complete		July 1, 2012	
14	12. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding to complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the Department of Economic Opportunity4 and each municipality in the Keys.	Complete		July 1, 2012	
15	13. By July 1, 2012, the Department of Economic Opportunity4 shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities Survey, Bureau of Economic and Business Research, and other studies). The County shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.	Complete		July 1, 2012	Yes
16	14. By July 1, 2012, the Department of Economic Opportunity (agency) shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The agency will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24 hour evacuation clearance time. If necessary, the Department of Economic Opportunity4 shall work with each local government to amend the Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.	Complete		July 1, 2012	
17	(5)(a) Carrying Capacity Study Implementation.				
18	15. By July 1, 2013, if necessary, the Department of Economic Opportunity4 shall work with each local government to amend the Comprehensive Plan to reflect revised allocation rates and distribution or propose rule making to the Administration Commission.	Complete		July 1, 2013	Yes
19	By March 31, 2012, the Area of Critical State Concern staff shall amend the agendas for the Hurricane Evacuation Clearance Modeling Workshops to include the potential for future transient allocations and their impact on hurricane evacuation clearance times. (January 18, 2012 Administration Commission Action)	Complete			

Monroe County

		ACSC Status	Monroe Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-20.140, F.A.C.	Achieved/ Not Achieved			
20	(5)(b) Wastewater Implementation.				
21	1. By July 1, 2011, Monroe County shall annually evaluate and allocate funding for wastewater implementation. Monroe County shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.	Complete	Allocated Funding in the FY 2020-2024 Big Coppitt Collection/Expansion = \$3,560,000 Duck Key WW = \$175,000 Cudjoe Regional Project = \$3,616,343 Decentralized Program (Cross Key, Pigeon Key and on-site) = \$2,400,000	July 1, 2020	2011-139 LOF, removed the requirement that the capital improvement update be an amendment to the comprehensive plan
22	2. By December 1, 2013, Monroe County shall work with the owners of wastewater facilities and onsite systems throughout the County and the Department of Health (DOH) and the Department of Environmental Protection (DEP) to fulfill the requirements of Sections 403.086(10) and 381.0065(3)(h) and (4)(l), F.S., regarding implementation of wastewater treatment and disposal. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet the 2015 treatment and disposal standards.	Complete		December 1, 2013	
23	3. By July 1, 2011, Monroe County shall annually draft a resolution requesting the issuance of \$50 million of the \$200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.	Complete	The funding authorized by Section 215.619, F.S., was included in the Florida Keys Stewardship Act and funding was requested under that new authorization. None of it is required for the wastewater program that is fully funded. Construction of wastewater projects are effectively completed.	July 1, 2020	
24	4. By July 1, 2011, Monroe County shall develop a mechanism to provide accurate and timely information and establish the County's annual funding allocations necessary to provide evidence of unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.	Complete		July 1, 2011	
25	5. By July 1, 2011, Monroe County shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.	Complete	The funding authorized by Section 215.619 F.S. was included in the Florida Keys Stewardship Act and funding was requested under that new authorization. None of it is required for the wastewater program that is fully funded. There are no additional funds needed. Construction of wastewater projects are effectively complete. Monroe County utilizes SHIP funding for sewer connections for income-eligible single-family and multi-family housing units located throughout Monroe County.	July 1, 2020	
26	6. By July 1, 2011, Monroe County shall develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities.	Complete		July 1, 2011	
27	By February 29, 2012, Monroe County shall submit a financial plan demonstrating local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities. (January 18, 2012 Administration Commission Action)	Complete		February 29, 2012	
29	7. By December 1, 2013, the County shall provide a report of addresses and the property appraiser's parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department, Department of Environmental Protection, and the Department of Economic Opportunity4. This report shall describe the status of the County's enforcement action.	Complete		December 1, 2013	
30	(5)(c) Wastewater Project Implementation.				
31	1. Key Largo Wastewater Treatment Facility. Key Largo Wastewater Treatment District is responsible for wastewater treatment in its service area and the completion of the Key Largo Wastewater Treatment Facility.				
32	a. By July 1, 2012, Monroe County shall complete construction of the South Transmission Line;	Complete		July 1, 2012	
33	b. By July 1, 2013, Monroe County shall complete design of Collection basin C, E, F, G, H, I, J, and K;	Complete		July 1, 2013	
34	c. By July 1, 2012, Monroe County shall complete construction of Collection basins E-H;	Complete		July 1, 2012	
35	d. By December 1, 2011, Monroe County shall schedule construction of Collection basins I-K;	Complete		December 1, 2011	
36	e. By July 1, 2011, Monroe County shall complete construction of Collection basins I-K;	Complete		July 1, 2011	
37	f. By July 1, 2011, Monroe County shall complete 50% of hook-ups to Key Largo Regional WWTP;	Complete		July 1, 2011	
38	g. By July 1, 2012, Monroe County shall complete 75% of hook-ups to Key Largo Regional WWTP;	Complete		July 1, 2012	
39	h. By July 1, 2013, Monroe County shall complete all remaining connections to Key Largo Regional WWTP.	Complete	There are a total of 10,584 non-vacant (developed) parcels. Of those developed parcels, 10,559 parcels (99.7% or approx. 100%) are connected.	July 1, 2013	

Monroe County

		ACSC Status	Monroe Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-20.140, F.A.C.	Achieved/ Not Achieved			
40	2. Hawk's Cay, Duck Key and Conch Key Wastewater Treatment Facility.				
41	a. By July 1, 2012, Monroe County shall complete construction of Hawk's Cay WWTP upgrade/expansion, transmission, and collection system;	Complete		July 1, 2012	
42	b. By July 1, 2013, Monroe County shall complete construction of Duck Key collection system;	Complete		July 1, 2013	
43	c. By July 1, 2012, Monroe County shall initiate property connections to Hawk's Cay WWTP;	Complete		July 1, 2012	
44	d. By December 1, 2012, Monroe County shall complete 50% of hook-ups to Hawk's Cay WWTP;	Complete		December 1, 2012	
45	e. By July 1, 2013, Monroe County shall complete 75% of hook-ups to Hawk's Cay WWTP; and	Complete		July 1, 2013	
46	f. By July 1, 2014, Monroe County shall complete all remaining connections to Hawk's Cay WWTP.	Incomplete	Conch Key / Coral Key = 100% Hawk's Cay = 100% Duck Key : There are 1,488 EDUs capable of generating wastewater. 1,451 EDUs are connected or 98%.	July 1, 2014	
47	3. South Lower Keys Wastewater Treatment Facility (Big Coppitt Regional System).				
48	a. By July 1, 2012, Monroe County shall complete 75% hookups to South Lower Keys WWTP; and	Complete		July 1, 2012	
49	b. By July 1, 2013, Monroe County shall complete all remaining connections to the South Lower Keys WWTP.	Incomplete	There are 1,743 EDUs in this system. 1,597 EDUs are connected or 92%.	July 1, 2013	
50	4. Cudjoe Regional Wastewater Treatment Facility.				
51	a. By July 1, 2011, Monroe County shall complete planning and design documents for the Cudjoe Regional Wastewater Treatment Facility, the Central Area (Cudjoe, Summerland, Upper Sugarloaf) collection system and the Central Area Transmission Main;	Complete		July 1, 2011	
52	b. By October 1, 2012, Monroe County shall initiate construction of Wastewater Treatment Facility, Central Area Collection System and Central Area Transmission Main;	Complete		October 1, 2012	
53	c. By July 1, 2014, Monroe County shall complete construction of Wastewater Treatment Facility, Central Area Collection System and Central Area Transmission Main; ¹	Complete		July 1, 2014	
54	By January, 2012 Monroe County shall complete design and planning for Outer Area (Lower Sugarloaf, Torch, Ramrod, Big Pine Key) Collection System and Transmission Main. ²	Complete		January 1, 2012	
55	d. By February 1, 2012, Monroe County shall initiate construction of Wastewater Treatment, Outer Area Collection System and Transmission Main; ¹	Complete		February 1, 2012	
56	e. By February 1, 2015, Monroe County shall complete construction of Outer Area collection and transmission main;	Complete		February 1, 2015	
57	f. By July 1, 2014, Monroe County shall initiate property connections – complete 25% of hook-ups to Cudjoe Regional WWTP;	Complete		July 1, 2014	
58	g. By July 1, 2015, Monroe County shall complete 50% of hook-ups to Cudjoe Regional WWTP; and	Complete		July 1, 2015	
59	h. By December 1, 2015, Monroe County shall complete remaining hook-ups to Cudjoe Regional WWTP.	Incomplete	There are 9,335 EDUs in the system. 6,920 EDUs are connected or 74%	December 1, 2015	

Monroe County

		ACSC Status	Monroe Comments	Rule Completion Date	Comprehensive Plan Amendment Required
Line #	WORK PROGRAM REQUIREMENTS PURSUANT TO RULE 28-20.140, F.A.C.	Achieved/ Not Achieved			
60	(5)(d) Stormwater Treatment Facilities.				
61	1. By July 1, 2011, Monroe County shall evaluate and allocate funding for stormwater implementation. Monroe County shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.	Complete		July 1, 2011	2011-139 LOF, removed the requirement that the capital improvement update be an amendment to the comprehensive plan
62	2. By July 1, 2011, Monroe County shall apply for stormwater grants from the South Florida Water Management District.	N/A		July 1, 2011	
63	3. By July 1, 2011, Monroe County shall complete Card Sound Road stormwater improvements.	Complete		July 1, 2011	

End Notes:

- 1) Corrects scriveners error in Rule 28-20.140 (5)(c)4.c. & d., F.A.C.
- 2) Omitted in final adopted rule. When rule is amended, rule will be modified to reflect this task.
- 4) References to the "Department of Community Affairs" have been replaced with the term "Department of Economic Opportunity."

Tab 4

Florida Keys Area of Critical State Concern

Program Statutes and Rules



Statute References

- Section 380.0552, Florida Statutes
- Section 381.0065, Florida Statutes
- Section 403.086, Florida Statutes

Rule References

- Chapter 28-18, Florida Administrative Codes
- Chapter 28-19, Florida Administrative Codes
- Chapter 28-20, Florida Administrative Codes

The 2020 Florida Statutes

[Title XXVIII](#)

NATURAL RESOURCES; CONSERVATION,
RECLAMATION, AND USE

[Chapter 380](#)

LAND AND WATER
MANAGEMENT

[View Entire
Chapter](#)

1380.0552 Florida Keys Area; protection and designation as area of critical state concern.—

- (1) SHORT TITLE.—This section may be cited as the “Florida Keys Area Protection Act.”
- (2) LEGISLATIVE INTENT.—It is the intent of the Legislature to:
 - (a) Establish a land use management system that protects the natural environment of the Florida Keys.
 - (b) Establish a land use management system that conserves and promotes the community character of the Florida Keys.
 - (c) 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.
 - (d) Provide affordable housing in close proximity to places of employment in the Florida Keys.
 - (e) Establish a land use management system that promotes and supports a diverse and sound economic base.
 - (f) Protect the constitutional rights of property owners to own, use, and dispose of their real property.
 - (g) Promote coordination and efficiency among governmental agencies that have permitting jurisdiction over land use activities in the Florida Keys.
 - (h) Promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys.
 - (i) Protect and improve the nearshore water quality of the Florida Keys through federal, state, and local funding of water quality improvement projects, including the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(11), as applicable.
 - (j) Ensure that the population of the Florida Keys can be safely evacuated.
- (3) RATIFICATION OF DESIGNATION.—The designation of the Florida Keys Area as an area of critical state concern, the boundaries of which are described in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, is hereby ratified.
- (4) REMOVAL OF DESIGNATION.—
 - (a) The designation of the Florida Keys Area as an area of critical state concern under this section may be recommended for removal upon fulfilling the legislative intent under subsection (2) and completion of all the work program tasks specified in rules of the Administration Commission.
 - (b) Beginning November 30, 2010, the state land planning agency shall annually submit a written report to the Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules. The land planning agency shall recommend removing the Florida Keys Area from being designated as an area of critical state concern to the commission if it determines that:
 1. All of the work program tasks have been completed, including construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(11) and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(l);
 2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill the legislative intent specified in subsection (2), and are consistent with and further the principles guiding development; and

3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

(c) After receipt of the state land planning agency report and recommendation, the Administration Commission shall determine whether the requirements have been fulfilled and may remove the designation of the Florida Keys as an area of critical state concern. If the commission removes the designation, it shall initiate rulemaking to repeal any rules relating to such designation within 60 days. If, after receipt of the state land planning agency's report and recommendation, the commission finds that the requirements for recommending removal of designation have not been met, the commission shall provide a written report to the local governments within 30 days after making such a finding detailing the tasks that must be completed by the local government.

(d) The Administration Commission's determination concerning the removal of the designation of the Florida Keys as an area of critical state concern may be reviewed pursuant to chapter 120. All proceedings shall be conducted by the Division of Administrative Hearings and must be initiated within 30 days after the commission issues its determination.

(e) After removal of the designation of the Florida Keys as an area of critical state concern, the state land planning agency shall review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, the boundaries of which were described in chapter 28-29, Florida Administrative Code, as of January 1, 2006, for compliance as defined in s. 163.3184. All procedures and penalties described in s. 163.3184 apply to the review conducted pursuant to this paragraph.

(f) The Administration Commission may adopt rules or revise existing rules as necessary to administer this subsection.

(5) APPLICATION OF THIS CHAPTER.—Section 380.05(1)-(5), (9)-(11), (15), (17), and (21) shall not apply to the area designated by this section for so long as the designation remains in effect. Except as otherwise provided in this section, s. 380.045 shall not apply to the area designated by this section. All other provisions of this chapter shall apply, including s. 380.07.

(6) RESOURCE PLANNING AND MANAGEMENT COMMITTEE.—The Governor, acting as the chief planning officer of the state, shall appoint a resource planning and management committee for the Florida Keys Area with the membership as specified in s. 380.045(2). Meetings shall be called as needed by the chair or on the demand of three or more members of the committee. The committee shall:

(a) Serve as a liaison between the state and local governments within Monroe County.

(b) Develop, with local government officials in the Florida Keys Area, recommendations to the state land planning agency as to the sufficiency of the Florida Keys Area's comprehensive plan and land development regulations.

(c) Recommend to the state land planning agency changes to state and regional plans and regulatory programs affecting the Florida Keys Area.

(d) Assist units of local government within the Florida Keys Area in carrying out the planning functions and other responsibilities required by this section.

(e) Review, at a minimum, all reports and other materials provided to it by the state land planning agency or other governmental agencies.

(7) PRINCIPLES FOR GUIDING DEVELOPMENT.—State, regional, and local agencies and units of government in the Florida Keys Area shall coordinate their plans and conduct their programs and regulatory activities consistent with the principles for guiding development as specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, which is adopted and incorporated herein by reference. For the purposes of reviewing the consistency of the adopted plan, or any amendments to that plan, with the principles for guiding development, and any amendments to the principles, the principles shall be construed as a whole and specific provisions may not be construed or applied in isolation from the other provisions. However, the principles for guiding development are repealed 18 months from July 1, 1986. After repeal, any plan amendments must be consistent with the following principles:

(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

- (b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
 - (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
 - (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
 - (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
 - (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
 - (g) Protecting the historical heritage of the Florida Keys.
 - (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 1. The Florida Keys Aqueduct and water supply facilities;
 2. Sewage collection, treatment, and disposal facilities;
 3. Solid waste treatment, collection, and disposal facilities;
 4. Key West Naval Air Station and other military facilities;
 5. Transportation facilities;
 6. Federal parks, wildlife refuges, and marine sanctuaries;
 7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 8. City electric service and the Florida Keys Electric Co-op; and
 9. Other utilities, as appropriate.
 - (i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; the installation and proper operation and maintenance of onsite sewage treatment and disposal systems; and other water quality and water supply projects, including direct and indirect potable reuse.
 - (j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(11), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
 - (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
 - (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
 - (m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.
 - (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.
- (8) COMPREHENSIVE PLAN ELEMENTS AND LAND DEVELOPMENT REGULATIONS.—The comprehensive plan elements and land development regulations approved pursuant to s. 380.05(6), (8), and (14) shall be the comprehensive plan elements and land development regulations for the Florida Keys Area.
- (9) MODIFICATION TO PLANS AND REGULATIONS.—
- (a) Any land development regulation or element of a local comprehensive plan in the Florida Keys Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon approval by the state land planning agency. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in chapter 27F-8, Florida Administrative Code, as amended effective August 23, 1984, and must approve or reject the requested changes within 60 days after receipt. Amendments to local comprehensive plans in the Florida Keys Area must also be reviewed for compliance with the following:
 1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment

and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086(11) for wastewater treatment and disposal facilities or s. 381.0065(4)(l) for onsite sewage treatment and disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

(b) The state land planning agency, after consulting with the appropriate local government, may, no more than once per year, recommend to the Administration Commission the enactment, amendment, or rescission of a land development regulation or element of a local comprehensive plan. Within 45 days following the receipt of such recommendation, the commission shall reject the recommendation, or accept it with or without modification and adopt it by rule, including any changes. Such local development regulation or plan must be in compliance with the principles for guiding development.

History.—s. 6, ch. 79-73; s. 4, ch. 86-170; s. 1, ch. 89-342; s. 641, ch. 95-148; s. 3, ch. 2006-223; s. 34, ch. 2010-205; s. 26, ch. 2011-4; s. 7, ch. 2016-225; s. 39, ch. 2020-150.

¹**Note.**—Section 7, ch. 2006-223, provides that “[i]f the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes. If, after the designation of the Florida Keys Area as an area of critical state concern is removed, an inverse condemnation action is initiated based upon land use regulations that were not adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission and in effect on the date of the designation’s removal, the state’s liability in the inverse condemnation action shall be determined by the courts in the manner in which the state’s liability is determined in areas that are not areas of critical state concern. The state shall have standing to appear in any inverse condemnation action.”

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[Title XXIX](#)

PUBLIC HEALTH

[Chapter 381](#)

PUBLIC HEALTH: GENERAL PROVISIONS

[View Entire Chapter](#)

1381.0065 Onsite sewage treatment and disposal systems; regulation.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public.

(b) It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

2(2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the term:

(a) “Available,” as applied to a publicly owned or investor-owned sewerage system, means that the publicly owned or investor-owned sewerage system is capable of being connected to the plumbing of an establishment or residence, is not under a Department of Environmental Protection moratorium, and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence; and:

1. For a residential subdivision lot, a single-family residence, or an establishment, any of which has an estimated sewage flow of 1,000 gallons per day or less, a gravity sewer line to maintain gravity flow from the property’s drain to the sewer line, or a low pressure or vacuum sewage collection line in those areas approved for low pressure or vacuum sewage collection, exists in a public easement or right-of-way that abuts the property line of the lot, residence, or establishment.

2. For an establishment with an estimated sewage flow exceeding 1,000 gallons per day, a sewer line, force main, or lift station exists in a public easement or right-of-way that abuts the property of the establishment or is within 50 feet of the property line of the establishment as accessed via existing rights-of-way or easements.

3. For proposed residential subdivisions with more than 50 lots, for proposed commercial subdivisions with more than 5 lots, and for areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within one-fourth mile of the development as measured and accessed via existing easements or rights-of-way.

4. For repairs or modifications within areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within 500 feet of an establishment’s or residence’s sewer stub-out as measured and accessed via existing rights-of-way or easements.

(b)1. “Bedroom” means a room that can be used for sleeping and that:

- a. For site-built dwellings, has a minimum of 70 square feet of conditioned space;
- b. For manufactured homes, is constructed according to the standards of the United States Department of Housing and Urban Development and has a minimum of 50 square feet of floor area;
- c. Is located along an exterior wall;
- d. Has a closet and a door or an entrance where a door could be reasonably installed; and
- e. Has an emergency means of escape and rescue opening to the outside in accordance with the Florida Building Code.

2. A room may not be considered a bedroom if it is used to access another room except a bathroom or closet.
 3. "Bedroom" does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room.
- (c) "Blackwater" means that part of domestic sewage carried off by toilets, urinals, and kitchen drains.
- (d) "Domestic sewage" means human body waste and wastewater, including bath and toilet waste, residential laundry waste, residential kitchen waste, and other similar waste from appurtenances at a residence or establishment.
- (e) "Graywater" means that part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.
- (f) "Florida Keys" means those islands of the state located within the boundaries of Monroe County.
- (g) "Injection well" means an open vertical hole at least 90 feet in depth, cased and grouted to at least 60 feet in depth which is used to dispose of effluent from an onsite sewage treatment and disposal system.
- (h) "Innovative system" means an onsite sewage treatment and disposal system that, in whole or in part, employs materials, devices, or techniques that are novel or unique and that have not been successfully field-tested under sound scientific and engineering principles under climatic and soil conditions found in this state.
- (i) "Lot" means a parcel or tract of land described by reference to recorded plats or by metes and bounds, or the least fractional part of subdivided lands having limited fixed boundaries or an assigned number, letter, or any other legal description by which it can be identified.
- (j) "Mean annual flood line" means the elevation determined by calculating the arithmetic mean of the elevations of the highest yearly flood stage or discharge for the period of record, to include at least the most recent 10-year period. If at least 10 years of data is not available, the mean annual flood line shall be as determined based upon the data available and field verification conducted by a certified professional surveyor and mapper with experience in the determination of flood water elevation lines or, at the option of the applicant, by department personnel. Field verification of the mean annual flood line shall be performed using a combination of those indicators listed in subparagraphs 1.-7. that are present on the site, and that reflect flooding that recurs on an annual basis. In those situations where any one or more of these indicators reflect a rare or aberrant event, such indicator or indicators shall not be utilized in determining the mean annual flood line. The indicators that may be considered are:
1. Water stains on the ground surface, trees, and other fixed objects;
 2. Hydric adventitious roots;
 3. Drift lines;
 4. Rafted debris;
 5. Aquatic mosses and liverworts;
 6. Moss collars; and
 7. Lichen lines.
- (k) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.
- (l) "Permanent nontidal surface water body" means a perennial stream, a perennial river, an intermittent stream, a perennial lake, a submerged marsh or swamp, a submerged wooded marsh or swamp, a spring, or a seep, as identified on the most recent quadrangle map, 7.5 minute series (topographic), produced by the United States Geological Survey, or products derived from that series. "Permanent nontidal surface water body" shall also mean an artificial surface water body that does not have an impermeable bottom and side and that is designed to hold, or does hold, visible standing water for at least 180 days of the year. However, a nontidal surface water body that

is drained, either naturally or artificially, where the intent or the result is that such drainage be temporary, shall be considered a permanent nontidal surface water body. A nontidal surface water body that is drained of all visible surface water, where the lawful intent or the result of such drainage is that such drainage will be permanent, shall not be considered a permanent nontidal surface water body. The boundary of a permanent nontidal surface water body shall be the mean annual flood line.

(m) "Potable water line" means any water line that is connected to a potable water supply source, but the term does not include an irrigation line with any of the following types of backflow devices:

1. For irrigation systems into which chemicals are not injected, any atmospheric or pressure vacuum breaker or double check valve or any detector check assembly.
2. For irrigation systems into which chemicals such as fertilizers, pesticides, or herbicides are injected, any reduced pressure backflow preventer.

(n) "Septage" means a mixture of sludge, fatty materials, human feces, and wastewater removed during the pumping of an onsite sewage treatment and disposal system.

(o) "Subdivision" means, for residential use, any tract or plot of land divided into two or more lots or parcels of which at least one is 1 acre or less in size for sale, lease, or rent. A subdivision for commercial or industrial use is any tract or plot of land divided into two or more lots or parcels of which at least one is 5 acres or less in size and which is for sale, lease, or rent. A subdivision shall be deemed to be proposed until such time as an application is submitted to the local government for subdivision approval or, in those areas where no local government subdivision approval is required, until such time as a plat of the subdivision is recorded.

(p) "Tidally influenced surface water body" means a body of water that is subject to the ebb and flow of the tides and has as its boundary a mean high-water line as defined by s. 177.27(15).

(q) "Toxic or hazardous chemical" means a substance that poses a serious danger to human health or the environment.

2(3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067, including definitions that are consistent with the definitions in this section, decreases to setback requirements where no health hazard exists, increases for the lot-flow allowance for performance-based systems, requirements for separation from water table elevation during the wettest season, requirements for the design and construction of any component part of an onsite sewage treatment and disposal system, application and permit requirements for persons who maintain an onsite sewage treatment and disposal system, requirements for maintenance and service agreements for aerobic treatment units and performance-based treatment systems, and recommended standards, including disclosure requirements, for voluntary system inspections to be performed by individuals who are authorized by law to perform such inspections and who shall inform a person having ownership, control, or use of an onsite sewage treatment and disposal system of the inspection standards and of that person's authority to request an inspection based on all or part of the standards.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an onsite sewage treatment and disposal system for a residence or establishment with an estimated domestic sewage flow of 10,000 gallons or less per day, or an estimated commercial sewage flow of 5,000 gallons or less per day, which is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the State Surgeon General, or his or her designee, shall timely assign a staff person to resolve the dispute.

(d) Grant variances in hardship cases under the conditions prescribed in this section and rules adopted under this section.

- (e) Permit the use of a limited number of innovative systems for a specific period of time, when there is compelling evidence that the system will function properly and reliably to meet the requirements of this section and rules adopted under this section.
 - (f) Issue annual operating permits under this section.
 - (g) Establish and collect fees as established under s. 381.0066 for services provided with respect to onsite sewage treatment and disposal systems.
 - (h) Conduct enforcement activities, including imposing fines, issuing citations, suspensions, revocations, injunctions, and emergency orders for violations of this section, part I of chapter 386, or part III of chapter 489 or for a violation of any rule adopted under this section, part I of chapter 386, or part III of chapter 489.
 - (i) Provide or conduct education and training of department personnel, service providers, and the public regarding onsite sewage treatment and disposal systems.
 - (j) Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of onsite sewage treatment and disposal systems within this state. Research fees collected under s. 381.0066(2)(k) must be used to develop and fund hands-on training centers designed to provide practical information about onsite sewage treatment and disposal systems to septic tank contractors, master septic tank contractors, contractors, inspectors, engineers, and the public and must also be used to fund research projects which focus on improvements of onsite sewage treatment and disposal systems, including use of performance-based standards and reduction of environmental impact. Research projects shall be initially approved by the technical review and advisory panel and shall be applicable to and reflect the soil conditions specific to Florida. Such projects shall be awarded through competitive negotiation, using the procedures provided in s. 287.055, to public or private entities that have experience in onsite sewage treatment and disposal systems in Florida and that are principally located in Florida. Research projects shall not be awarded to firms or entities that employ or are associated with persons who serve on either the technical review and advisory panel or the research review and advisory committee.
 - (k) Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system.
 - (l) Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any system regulated under this chapter and not regulated by the Department of Environmental Protection.
 - (m) Permit and inspect portable or temporary toilet services and holding tanks. The department shall review applications, perform site evaluations, and issue permits for the temporary use of holding tanks, privies, portable toilet services, or any other toilet facility that is intended for use on a permanent or nonpermanent basis, including facilities placed on construction sites when workers are present. The department may specify standards for the construction, maintenance, use, and operation of any such facility for temporary use.
 - (n) Regulate and permit maintenance entities for performance-based treatment systems and aerobic treatment unit systems. To ensure systems are maintained and operated according to manufacturer's specifications and designs, the department shall establish by rule minimum qualifying criteria for maintenance entities. The criteria shall include: training, access to approved spare parts and components, access to manufacturer's maintenance and operation manuals, and service response time. The maintenance entity shall employ a contractor licensed under s. 489.105(3)(m), or part III of chapter 489, or a state-licensed wastewater plant operator, who is responsible for maintenance and repair of all systems under contract.
- 2(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic

treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.
3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.
4. Fifty feet from any nonpotable well.
5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.
6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.
7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.
8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

- a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.
- b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

- a. The hardship was not caused intentionally by the action of the applicant;
- b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

- c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

- a. The State Surgeon General or his or her designee.
- b. A representative from the county health departments.
- c. A representative from the home building industry recommended by the Florida Home Builders Association.
- d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.
- e. A representative from the Department of Environmental Protection.
- f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.
- g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an

onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

3. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced. The reports may be submitted electronically.

4. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own performance-based treatment system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

5. The property owner shall obtain a biennial system operating permit from the department for each system. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation.

6. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent

from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.

d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. In areas not scheduled to be served by a central sewer, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

4. In areas scheduled to be served by central sewer by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewer system, the property owner may install a holding tank with a high water alarm or an onsite sewage treatment and disposal system that meets the following minimum standards:

a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance with department rule; and

b. A sand-lined drainfield or injection well in accordance with department rule must be installed.

5. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.

6. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.

7. The authority of a local government, including a special district, to mandate connection of an onsite sewage treatment and disposal system is governed by s. 4, chapter 99-395, Laws of Florida.

8. Notwithstanding any other provision of law, an onsite sewage treatment and disposal system installed after July 1, 2010, in unincorporated Monroe County, excluding special wastewater districts, that complies with the standards in subparagraph 2. is not required to connect to a central sewer system until December 31, 2020.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(j). The department shall accept evaluations submitted by professional engineers and such other

persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the State Surgeon General, or his or her designee.
2. A representative from the septic tank industry.
3. A representative from the home building industry.
4. A representative from an environmental interest group.
5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.
6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.
7. A representative from local government who is knowledgeable about domestic wastewater treatment.
8. A representative from the real estate profession.
9. A representative from the restaurant industry.
10. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

- a. The lot is at least one-half acre in size;
- b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and
- c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50 percent; or a system approved by the county health department pursuant to department rule other

than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u)1. The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The reports may be submitted electronically.

2. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own aerobic treatment unit system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance entity service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

3. A septic tank contractor licensed under part III of chapter 489, if approved by the manufacturer, may not be denied access by the manufacturer to aerobic treatment unit system training or spare parts for maintenance entities. After the original warranty period, component parts for an aerobic treatment unit system may be replaced with parts that meet manufacturer's specifications but are manufactured by others. The maintenance entity shall maintain documentation of the substitute part's equivalency for 2 years and shall provide such documentation to the department upon request.

4. The owner of an aerobic treatment unit system shall obtain a system operating permit from the department and allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

(w) Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated by a governmental entity at the point of sale in a real estate transaction. This paragraph does not affect a septic tank phase-out deferral program implemented by a consolidated government as defined in s. 9, Art. VIII of the State Constitution (1885).

(x) A governmental entity, including a municipality, county, or statutorily created commission, may not require an engineer-designed performance-based treatment system, excluding a passive engineer-designed performance-based treatment system, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(y)1. An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

b. The system is not a sanitary nuisance; and

c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(z) If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(aa) An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

(5) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(a) Department personnel who have reason to believe noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

(6) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited.

(7) USE OF ENHANCED NUTRIENT-REDUCING ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS.—To meet the requirements of a total maximum daily load, the department shall implement a fast-track approval process of no longer than 6 months for the determination of the use of American National Standards Institute 245 systems approved by NSF International before July 1, 2020.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 75-145; s. 72, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 77-308; s. 1, ch. 78-430; s. 1, ch. 79-45; s. 1, ch. 82-10; s. 37, ch. 83-218; ss. 43, 46, ch. 83-310; s. 1, ch. 84-119; s. 4, ch. 85-314; s. 5, ch. 86-220; s. 14, ch. 89-324; s. 26, ch. 91-297; ss. 1, 10, 11, ch. 93-151; s. 40, ch. 94-218; s. 352, ch. 94-356; s. 1033, ch. 95-148; ss. 1, 3, ch. 96-303; s. 116, ch. 96-410; s. 181, ch. 97-101; s. 21, ch. 97-237; s. 7, ch. 98-151; s. 2, ch. 98-420; s. 192, ch. 99-13; ss. 1, 7, ch. 99-395; s. 10, ch. 2000-242; s. 19, ch. 2001-62; s. 1, ch. 2001-234; s. 7, ch. 2004-350; s. 48, ch. 2005-2; s. 4, ch. 2006-68; s. 1, ch. 2008-215; s. 19, ch. 2008-240; s. 35, ch. 2010-205; s. 1, ch. 2010-283; s. 28, ch. 2011-4; s. 3, ch. 2012-13; s. 32, ch. 2012-184; s. 67, ch. 2013-15; s. 1, ch. 2013-79; s. 7, ch. 2013-193; s. 10, ch. 2013-213; ss. 50, 51, ch. 2015-222; ss. 6, 7, 52, ch. 2020-150.

¹**Note.**—Section 2, ch. 2020-150, provides that:

“(1) By July 1, 2020, the Department of Health must provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the following information regarding the Onsite Sewage Program:

- “(a) The average number of permits issued each year;
- “(b) The number of department employees conducting work on or related to the program each year; and
- “(c) The program's costs and expenditures, including, but not limited to, salaries and benefits, equipment costs, and contracting costs.

“(2) By December 31, 2020, the Department of Health and the Department of Environmental Protection shall submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the transfer of the Onsite Sewage Program from the Department of Health to the Department of Environmental Protection. The recommendations must address all aspects of the transfer, including the continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

“(3) By June 30, 2021, the Department of Health and the Department of Environmental Protection shall enter into an interagency agreement based on the Department of Health report required under subsection (2) and on recommendations from a plan that must address all agency cooperation for a period not less than 5 years after the transfer, including:

“(a) The continued role of the county health departments in the permitting, inspection, data management, and tracking of onsite sewage treatment and disposal systems under the direction of the Department of Environmental Protection.

“(b) The appropriate proportionate number of administrative, auditing, inspector general, attorney, and operational support positions, and their related funding levels and sources and assigned property, to be transferred from the Office of General Counsel, the Office of Inspector General, and the Division of Administrative Services or other relevant offices or divisions within the Department of Health to the Department of Environmental Protection.

“(c) The development of a recommended plan to address the transfer or shared use of buildings, regional offices, and other facilities used or owned by the Department of Health.

“(d) Any operating budget adjustments that are necessary to implement the requirements of this act. Adjustments made to the operating budgets of the agencies in the implementation of this act must be made in consultation with the appropriate substantive and

fiscal committees of the Senate and the House of Representatives. The revisions to the approved operating budgets for the 2021-2022 fiscal year which are necessary to reflect the organizational changes made by this act must be implemented pursuant to s. 216.292(4)(d), Florida Statutes, and are subject to s. 216.177, Florida Statutes. Subsequent adjustments between the Department of Health and the Department of Environmental Protection which are determined necessary by the respective agencies and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, Florida Statutes. The appropriate substantive committees of the Senate and the House of Representatives must also be notified of the proposed revisions to ensure their consistency with legislative policy and intent.

“(4) Effective July 1, 2021, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of onsite sewage treatment and disposal systems relating to the Onsite Sewage Program in the Department of Health are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Environmental Protection.

“(5) Notwithstanding chapter 60L-34, Florida Administrative Code, or any law to the contrary, employees who are transferred from the Department of Health to the Department of Environmental Protection to fill positions transferred by this act retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.”

² Note.—Section 7, ch. 2020-150, added a new paragraph (2)(d) and amended subsections (3) and (4), effective July 1, 2021, to read:

(d) “Department” means the Department of Environmental Protection.

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(3) DUTIES AND POWERS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.—The department shall:

(a) Adopt rules to administer ss. 381.0065-381.0067, including definitions that are consistent with the definitions in this section, increases for the lot-flow allowance for performance-based systems, requirements for separation from water table elevation during the wettest season, requirements for the design and construction of any component part of an onsite sewage treatment and disposal system, application and permit requirements for persons who maintain an onsite sewage treatment and disposal system, requirements for maintenance and service agreements for aerobic treatment units and performance-based treatment systems, and recommended standards, including disclosure requirements, for voluntary system inspections to be performed by individuals who are authorized by law to perform such inspections and who shall inform a person having ownership, control, or use of an onsite sewage treatment and disposal system of the inspection standards and of that person’s authority to request an inspection based on all or part of the standards.

(b) Perform application reviews and site evaluations, issue permits, and conduct inspections and complaint investigations associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of an onsite sewage treatment and disposal system for a residence or establishment with an estimated domestic sewage flow of 10,000 gallons or less per day, or an estimated commercial sewage flow of 5,000 gallons or less per day, which is not currently regulated under chapter 403.

(c) Develop a comprehensive program to ensure that onsite sewage treatment and disposal systems regulated by the department are sized, designed, constructed, installed, sited, repaired, modified, abandoned, used, operated, and maintained in compliance with this section and rules adopted under this section to prevent groundwater contamination, including impacts from nutrient pollution, and surface water contamination and to preserve the public health. The department is the final administrative interpretive authority regarding rule interpretation. In the event of a conflict regarding rule interpretation, the Secretary of Environmental Protection, or his or her designee, shall timely assign a staff person to resolve the dispute.

(d) Grant variances in hardship cases under the conditions prescribed in this section and rules adopted under this section.

(e) Permit the use of a limited number of innovative systems for a specific period of time, when there is compelling evidence that the system will function properly and reliably to meet the requirements of this section and rules adopted under this section.

(f) Issue annual operating permits under this section.

(g) Establish and collect fees as established under s. 381.0066 for services provided with respect to onsite sewage treatment and disposal systems.

(h) Conduct enforcement activities, including imposing fines, issuing citations, suspensions, revocations, injunctions, and emergency orders for violations of this section, part I of chapter 386, or part III of chapter 489 or for a violation of any rule adopted under this section, part I of chapter 386, or part III of chapter 489.

(i) Provide or conduct education and training of department personnel, service providers, and the public regarding onsite sewage treatment and disposal systems.

(j) Supervise research on, demonstration of, and training on the performance, environmental impact, and public health impact of onsite sewage treatment and disposal systems within this state. Research fees collected under s. 381.0066(2)(k) must be used to develop and fund hands-on training centers designed to provide practical information about onsite sewage treatment and disposal systems to septic tank contractors, master septic tank contractors, contractors, inspectors, engineers, and the public and must also be used to fund research projects which focus on improvements of onsite sewage treatment and disposal systems, including use of performance-based standards and reduction of environmental impact. Research projects shall be applicable to and reflect the soil conditions specific to this state. Such projects shall be awarded through competitive negotiation, using the procedures provided in s. 287.055, to public or private entities that have experience in onsite sewage treatment and disposal systems in this state and that are principally located in this state.

(k) Approve the installation of individual graywater disposal systems in which blackwater is treated by a central sewerage system.

(l) Regulate and permit the sanitation, handling, treatment, storage, reuse, and disposal of byproducts from any system regulated under this chapter.

(m) Permit and inspect portable or temporary toilet services and holding tanks. The department shall review applications, perform site evaluations, and issue permits for the temporary use of holding tanks, privies, portable toilet services, or any other toilet facility that is

intended for use on a permanent or nonpermanent basis, including facilities placed on construction sites when workers are present. The department may specify standards for the construction, maintenance, use, and operation of any such facility for temporary use.

(n) Regulate and permit maintenance entities for performance-based treatment systems and aerobic treatment unit systems. To ensure systems are maintained and operated according to manufacturer's specifications and designs, the department shall establish by rule minimum qualifying criteria for maintenance entities. The criteria shall include training, access to approved spare parts and components, access to manufacturer's maintenance and operation manuals, and service response time. The maintenance entity shall employ a contractor licensed under s. 489.105(3)(m), or part III of chapter 489, or a state-licensed wastewater plant operator, who is responsible for maintenance and repair of all systems under contract.

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the department. A construction permit is valid for 18 months after the date of issuance and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days after the date of issuance. An operating permit must be obtained before the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year after the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years after the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. A fee is not associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the department, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewage treatment system is available. This paragraph does not allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) The department shall adopt rules relating to the location of onsite sewage treatment and disposal systems, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rulemaking process for such rules must be completed by July 1, 2022, and the department shall notify the Division of Law Revision of the date such rules take effect. The rules must consider conventional and enhanced nutrient-reducing onsite sewage treatment and disposal system designs, impaired or degraded water bodies, domestic wastewater and drinking water infrastructure, potable water sources, nonpotable wells, stormwater infrastructure, the onsite sewage treatment and disposal system remediation plans developed pursuant to s. 403.067(7)(a)9.b., nutrient pollution, and the recommendations of the onsite sewage treatment and disposal systems technical advisory committee established pursuant to s. 381.00652. The rules must also allow a person to apply for and receive a variance from a rule

requirement upon demonstration that the requirement would cause an undue hardship and granting the variance would not cause or contribute to the exceedance of a total maximum daily load.

(f) Onsite sewage treatment and disposal systems that are permitted ³before the rules in paragraph (e) take effect may not be placed closer than:

1. Seventy-five feet from a private potable well.
2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.
3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.
4. Fifty feet from any nonpotable well.
5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.
6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.
7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.
8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(g) This section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

- a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.
- b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. A fee is not associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

- a. The hardship was not caused intentionally by the action of the applicant;
- b. A reasonable alternative, taking into consideration factors such as cost, does not exist for the treatment of the sewage; and
- c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

- a. The Secretary of Environmental Protection or his or her designee.
- b. A representative from the county health departments.
- c. A representative from the home building industry recommended by the Florida Home Builders Association.
- d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.
- e. A representative from the Department of Health.
- f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.
- g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewage treatment system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department may not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, does not need to obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. A person electing to use an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may use an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

3. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced. The reports may be submitted electronically.

4. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own performance-based treatment system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

5. The property owner shall obtain a biennial system operating permit from the department for each system. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation.

6. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system that is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems. The following additional requirements apply to onsite sewage treatment and disposal systems in Monroe County:

1. The county, each municipality, and those special districts established for the purpose of the collection, transmission, treatment, or disposal of sewage shall ensure, in accordance with the specific schedules adopted by the Administration Commission under s. 380.0552, the completion of onsite sewage treatment and disposal system upgrades to meet the requirements of this paragraph.

2. Onsite sewage treatment and disposal systems must cease discharge by December 31, 2015, or must comply with department rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

- a. Biochemical Oxygen Demand (CBOD₅) of 10 mg/l.
- b. Suspended Solids of 10 mg/l.
- c. Total Nitrogen, expressed as N, of 10 mg/l or a reduction in nitrogen of at least 70 percent. A system that has been tested and certified to reduce nitrogen concentrations by at least 70 percent shall be deemed to be in compliance with this standard.
- d. Total Phosphorus, expressed as P, of 1 mg/l.

In addition, onsite sewage treatment and disposal systems discharging to an injection well must provide basic disinfection as defined by department rule.

3. In areas not scheduled to be served by a central sewerage system, onsite sewage treatment and disposal systems must, by December 31, 2015, comply with department rules and provide the level of treatment described in subparagraph 2.

4. In areas scheduled to be served by a central sewerage system by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewerage system, the property owner may install a holding tank with a high water alarm or an onsite sewage treatment and disposal system that meets the following minimum standards:

- a. The existing tanks must be pumped and inspected and certified as being watertight and free of defects in accordance with department rule; and
- b. A sand-lined drainfield or injection well in accordance with department rule must be installed.
5. Onsite sewage treatment and disposal systems must be monitored for total nitrogen and total phosphorus concentrations as required by department rule.
6. The department shall enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including ensuring that the appropriate level of treatment described in subparagraph 2. is met.
7. The authority of a local government, including a special district, to mandate connection of an onsite sewage treatment and disposal system is governed by s. 4, chapter 99-395, Laws of Florida.
8. Notwithstanding any other law, an onsite sewage treatment and disposal system installed after July 1, 2010, in unincorporated Monroe County, excluding special wastewater districts, that complies with the standards in subparagraph 2. is not required to connect to a central sewerage system until December 31, 2020.

(m) A product sold in the state for use in onsite sewage treatment and disposal systems may not contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. If a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(k). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. Specific documentation of property ownership is not required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(p) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider before submission of an application for an onsite sewage treatment and disposal system.

(q) This section does not limit the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(r) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering may not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(s) Notwithstanding subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield may not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations before January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

- a. The lot is at least one-half acre in size;
- b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and
- c. The applicant installs a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system that is capable of reducing effluent nitrate by at least 50 percent in accordance with department rules; or a system other than a system using alternative drainfield materials in accordance with department rules. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water may not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(t)1. The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The reports may be submitted electronically.

2. The property owner of an owner-occupied, single-family residence may be approved and permitted by the department as a maintenance entity for his or her own aerobic treatment unit system upon written certification from the system manufacturer's approved representative that the property owner has received training on the proper installation and service of the system. The maintenance entity service agreement must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system but is subject to all permitting requirements.

3. A septic tank contractor licensed under part III of chapter 489, if approved by the manufacturer, may not be denied access by the manufacturer to aerobic treatment unit system training or spare parts for maintenance entities. After the original warranty period, component parts for an aerobic treatment unit system may be replaced with parts that meet manufacturer's specifications but are manufactured by others. The maintenance entity shall maintain documentation of the substitute part's equivalency for 2 years and shall provide such documentation to the department upon request.

4. The owner of an aerobic treatment unit system shall obtain a system operating permit from the department and allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(u) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

(v) Any permit issued and approved by the department for the installation, modification, or repair of an onsite sewage treatment and disposal system shall transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an onsite sewage treatment and disposal system which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated by a governmental entity at the point of sale in a real estate transaction. This paragraph does not affect a septic tank phase-out deferral program implemented by a consolidated government as defined in s. 9, Art. VIII of the State Constitution (1885).

(w) A governmental entity, including a municipality, county, or statutorily created commission, may not require an engineer-designed performance-based treatment system, excluding a passive engineer-designed performance-based treatment system, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project. This paragraph does not apply to a governmental entity, including a municipality, county, or statutorily created commission, which adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding this paragraph, an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

(x)1. An onsite sewage treatment and disposal system is not considered abandoned if the system is disconnected from a structure that was made unusable or destroyed following a disaster and if the system was properly functioning at the time of disconnection and was not adversely affected by the disaster. The onsite sewage treatment and disposal system may be reconnected to a rebuilt structure if:

- a. The reconnection of the system is to the same type of structure which contains the same number of bedrooms or fewer, if the square footage of the structure is less than or equal to 110 percent of the original square footage of the structure that existed before the disaster;

- b. The system is not a sanitary nuisance; and
- c. The system has not been altered without prior authorization.

2. An onsite sewage treatment and disposal system that serves a property that is foreclosed upon is not considered abandoned.

(y) If an onsite sewage treatment and disposal system permittee receives, relies upon, and undertakes construction of a system based upon a validly issued construction permit under rules applicable at the time of construction but a change to a rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time

of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

(z) An existing-system inspection or evaluation and assessment, or a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition or modification to a single-family home if a bedroom is not added. However, a remodeling addition or modification to a single-family home may not cover any part of the existing system or encroach upon a required setback or the unobstructed area. To determine if a setback or the unobstructed area is impacted, the local health department shall review and verify a floor plan and site plan of the proposed remodeling addition or modification to the home submitted by a remodeler which shows the location of the system, including the distance of the remodeling addition or modification to the home from the onsite sewage treatment and disposal system. The local health department may visit the site or otherwise determine the best means of verifying the information submitted. A verification of the location of a system is not an inspection or evaluation and assessment of the system. The review and verification must be completed within 7 business days after receipt by the local health department of a floor plan and site plan. If the review and verification is not completed within such time, the remodeling addition or modification to the single-family home, for the purposes of this paragraph, is approved.

³ Note.—Section 52, ch. 2020-150, provides that “[t]he Division of Law Revision is directed to replace the phrase ‘before the rules [. . .] in paragraph (e) take effect’ as it is used in the amendment made by this act to s. 381.0065(4)(f), Florida Statutes, with the date such rules are adopted, as provided by the Department of Environmental Protection pursuant to s. 381.0065(4)(e), Florida Statutes, as amended by this act.”

Note.—Former s. 381.272.

The 2020 Florida Statutes

[Title XXIX](#)
[PUBLIC HEALTH](#)

[Chapter 403](#)
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403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)(a) The Department of Health or any other state agency, county, special district, or municipality may not approve construction of any sewage disposal facilities which do not provide for secondary waste treatment and advanced waste treatment as deemed necessary and ordered by the department.

(b) Sewage disposal facilities constructed after June 14, 1978, may not dispose of any wastes by deep well injection without providing for secondary waste treatment and advanced waste treatment deemed necessary by the department to protect adequately the beneficial use of the receiving waters.

(c) Notwithstanding this chapter or chapter 373, sewage disposal facilities may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor Bay, or, beginning July 1, 2025, Indian River Lagoon, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph does not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

(d) By December 31, 2020, the department, in consultation with the water management districts and sewage disposal facilities, shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a progress report on the status of upgrades made by each facility to meet the advanced waste treatment requirements under paragraph (c). The report must include a list of sewage disposal facilities required to upgrade to advanced waste treatment, the preliminary cost estimates for the upgrades, and a projected timeline of the dates by which the upgrades will begin and be completed and the date by which operations of the upgraded facility will begin.

(2) All sewage disposal facilities shall provide for secondary waste treatment, a power outage contingency plan that mitigates the impacts of power outages on the utility's collection system and pump stations, and advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform is punishable by a civil penalty of \$750 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) This section shall not be construed to prohibit or regulate septic tanks or other means of individual waste disposal which are otherwise subject to state regulation.

(4) For purposes of this section, the term "advanced waste treatment" means that treatment which will provide a reclaimed water product that:

- (a) Contains not more, on a permitted annual average basis, than the following concentrations:
 1. Biochemical Oxygen Demand
(CBOD5). 5mg/l
 2. Suspended Solids. 5mg/l
 3. Total Nitrogen, expressed as N. 3mg/l
 4. Total Phosphorus, expressed as P. 1mg/l
- (b) Has received high level disinfection, as defined by rule of the department.

In those waters where the concentrations of phosphorus have been shown not to be a limiting nutrient or a contaminant, the department may waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

(5)(a) Notwithstanding any other provisions of this chapter or chapter 373, when a reclaimed water product has been established to be in compliance with the standards set forth in subsection (4), that water shall be presumed to be allowable, and its discharge shall be permitted in the waters described in paragraph (1)(c) at a reasonably accessible point where such discharge results in minimal negative impact. This presumption may be overcome only by a demonstration that one or more of the following would occur:

1. That the discharge of reclaimed water that meets the standards set forth in subsection (4) will be, by itself, a cause of considerable degradation to an Outstanding Florida Water or to other waters and is not clearly in the public interest.
2. That the reclaimed water discharge will have a substantial negative impact on an approved shellfish harvesting area or a water used as a public domestic water supply.
3. That the increased volume of fresh water contributed by the reclaimed water product will seriously alter the natural fresh-salt water balance of the receiving water after reasonable opportunity for mixing.

(b) If one or more of the conditions described in subparagraphs (a)1.-3. have been demonstrated, remedies may include, but are not limited to, the following:

1. Require more stringent effluent limitations;
2. Order the point or method of discharge changed;
3. Limit the duration or volume of the discharge; or
4. Prohibit the discharge only if no other alternative is in the public interest.

(6) Any facility covered in paragraph (1)(c) shall be permitted to discharge if it meets the standards set forth in subsections (4) and (5). All of the facilities covered in paragraph (1)(c) shall be required to meet the standards set forth in subsections (4) and (5).

(7) All sewage disposal facilities under subsection (2) which control a collection or transmission system of pipes and pumps to collect and transmit wastewater from domestic or industrial sources to the facility shall take steps to prevent sanitary sewer overflows or underground pipe leaks and ensure that collected wastewater reaches the facility for appropriate treatment. Facilities must use inflow and infiltration studies and leakage surveys to develop pipe assessment, repair, and replacement action plans with a 5-year planning horizon that comply with department rule to limit, reduce, and eliminate leaks, seepages, or inputs into wastewater treatment systems' underground pipes. The pipe assessment, repair, and replacement action plans must be reported to the department. The facility action plans must include information regarding the annual expenditures dedicated to the inflow and infiltration studies and the required replacement action plans; expenditures that are dedicated to pipe assessment, repair, and replacement; and expenditures designed to limit the presence of fats, roots, oils, and grease in the facility's collection system. The department shall adopt rules regarding the implementation of inflow and infiltration studies and leakage surveys; however, such rules may not fix or revise utility rates or budgets. A utility or an operating entity subject to this subsection and s. 403.061(14) may submit one report to comply with both requirements. Substantial compliance with this subsection is evidence in mitigation for the purposes of assessing penalties pursuant to ss. 403.121 and 403.141.

(8)(a) The department shall allow backup discharges pursuant to permit only. The backup discharge shall be limited to 30 percent of the permitted reuse capacity on an annual basis. For purposes of this subsection, a "backup discharge" is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under department rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system.

(b) Notwithstanding any other provisions of this chapter or chapter 373, backup discharges of reclaimed water meeting the standards as set forth in subsection (4) shall be presumed to be allowable and shall be permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Wet weather discharges as provided in s. 2(3)(c), chapter 90-262, Laws of Florida, shall include backup discharges as

provided in this section. The presumption of the allowability of a backup discharge may be overcome only by a demonstration that one or more of the following conditions is present:

1. The discharge will be to an Outstanding Florida Water, except as provided in chapter 90-262, Laws of Florida;
2. The discharge will be to Class I or Class II waters;
3. The increased volume of fresh water contributed by a backup discharge will seriously alter the natural freshwater to saltwater balance of receiving waters after reasonable opportunity for mixing;
4. The discharge will be to a water body having a pollutant load reduction goal established by a water management district or the department, and the discharge will cause or contribute to a violation of the established goal;
5. The discharge fails to meet the requirements of the antidegradation policy contained in department rules; or
6. The discharge will be to waters that the department determines require more stringent nutrient limits than those set forth in subsection (4).

- (c) Any backup discharge shall be subject to the provisions of the antidegradation policy contained in department rules.
- (d) If one or more of the conditions described in paragraph (b) have been demonstrated, a backup discharge may still be allowed in conjunction with one or more of the remedies provided in paragraph (5)(b) or other suitable measures.
- (e) The department shall allow lower levels of treatment of reclaimed water if the applicant affirmatively demonstrates that water quality standards will be met during periods of backup discharge and if all other requirements of this subsection are met.

(9) The department may require backflow prevention devices on potable water lines within reclaimed water service areas to protect public health and safety. The department shall establish rules that determine when backflow prevention devices on potable water lines are necessary and when such devices are not necessary.

(10) The Legislature finds that the discharge of domestic wastewater through ocean outfalls wastes valuable water supplies that should be reclaimed for beneficial purposes to meet public and natural systems demands. The Legislature also finds that discharge of domestic wastewater through ocean outfalls compromises the coastal environment, quality of life, and local economies that depend on those resources. The Legislature declares that more stringent treatment and management requirements for such domestic wastewater and the subsequent, timely elimination of ocean outfalls as a primary means of domestic wastewater discharge are in the public interest.

(a) The construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose, along with associated pumping and piping systems, are prohibited. Each domestic wastewater ocean outfall shall be limited to the discharge capacity specified in the department permit authorizing the outfall in effect on July 1, 2008, which discharge capacity shall not be increased. Maintenance of existing, department-authorized domestic wastewater ocean outfalls and associated pumping and piping systems is allowed, subject to the requirements of this section. The department is directed to work with the United States Environmental Protection Agency to ensure that the requirements of this subsection are implemented consistently for all domestic wastewater facilities in the state which discharge through ocean outfalls.

(b) The discharge of domestic wastewater through ocean outfalls must meet advanced wastewater treatment and management requirements by December 31, 2018. For purposes of this subsection, the term "advanced wastewater treatment and management requirements" means the advanced waste treatment requirements set forth in subsection (4), a reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4), or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) were fully implemented beginning December 31, 2018, and continued through December 31, 2025. The department shall establish the average baseline loadings of total nitrogen and total phosphorus for each outfall using monitoring data available for calendar years 2003 through 2007 and

establish required loading reductions based on this baseline. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph are deemed met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed by December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's baseline flow on an annual basis for reuse activities authorized by the department.

(c1). Each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install, or cause to be installed, a functioning reuse system within the utility's service area or, by contract with another utility, within Miami-Dade County, Broward County, or Palm Beach County by December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of a facility's baseline flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the department. For purposes of this subsection, the term "baseline flow" means the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007.

2. Flows diverted from facilities to other facilities that provide 100 percent reuse of the diverted flows before December 31, 2025, are considered to contribute to meeting the reuse requirement. For utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities served by the outfalls, including flows diverted to other facilities for 100 percent reuse before December 31, 2025. Utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer such responsibility among the utilities. If treatment in addition to the advanced wastewater treatment and management requirements described in paragraph (b) is needed to support a functioning reuse system, the treatment must be fully operational by December 31, 2025.

3. If a facility that discharges through an ocean outfall contracts with another utility to install a functioning reuse system, the department must approve any apportionment of the reuse generated from the new or expanded reuse system that is intended to satisfy all or a portion of the reuse requirements pursuant to subparagraph 1. If a contract is between two utilities that have reuse requirements pursuant to subparagraph 1., the reuse apportioned to each utility's requirement may not exceed the total reuse generated by the new or expanded reuse system. A utility shall provide the department a copy of any contract with another utility that reflects an agreement between the utilities which is subject to the requirements of this subparagraph.

(d) The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the department. Except as otherwise provided in this subsection, a backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems, and must comply with the advanced wastewater treatment and management requirements of paragraph (b). Peak flow backup discharges from other wastewater management systems may not cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in department rules. If peak flow backup discharges are in compliance with the effluent limitations, the discharges are deemed to meet the advanced wastewater treatment and management requirements of this subsection.

(e) The holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall submit the following to the secretary of the department:

1. A detailed plan to meet the requirements of this subsection, including the identification of the technical, environmental, and economic feasibility of various reuse options; the identification of each land acquisition and facility necessary to provide for reuse of the domestic wastewater; an analysis of the costs to meet the requirements, including the level of treatment necessary to satisfy state water quality requirements and local

water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources; and a financing plan for meeting the requirements, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, other charges, or other financing mechanisms. The plan must evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the Lower East Coast Regional Water Supply Plan of the South Florida Water Management District. The plan must include a detailed schedule for the completion of all necessary actions and be accompanied by supporting data and other documentation. The plan must be submitted by July 1, 2013.

2. By July 1, 2016, an update of the plan required in subparagraph 1. documenting any refinements or changes in the costs, actions, or financing necessary to eliminate the ocean outfall discharge in accordance with this subsection or a written statement that the plan is current and accurate.

(f) By December 31, 2009, and by December 31 every 5 years thereafter, the holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall shall submit to the secretary of the department a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of this subsection, including progress toward meeting the specific deadlines set forth in paragraphs (b) through (e). The report shall include the detailed schedule for and status of the evaluation of reuse and disposal options, preparation of preliminary design reports, preparation and submittal of permit applications, construction initiation, construction progress milestones, construction completion, initiation of operation, and continuing operation and maintenance.

(g) By July 1, 2010, and by July 1 every 5 years thereafter, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of this subsection. In the report, the department shall summarize progress to date, including the increased amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.

(h) The renewal of each permit that authorizes the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, must be accompanied by an order in accordance with s. 403.088(2)(e) and (f) which establishes an enforceable compliance schedule consistent with the requirements of this subsection.

(i) An entity that diverts wastewater flow from a receiving facility that discharges domestic wastewater through an ocean outfall must meet the reuse requirement of paragraph (c). Reuse by the diverting entity of the diverted flows shall be credited to the diverting entity. The diverted flow shall also be correspondingly deducted from the receiving facility's baseline flow from which the required reuse is calculated pursuant to paragraph (c), and the receiving facility's reuse requirement shall be recalculated accordingly.

The department, the South Florida Water Management District, and the affected utilities must consider the information in the detailed plan in paragraph (e) for the purpose of adjusting, as necessary, the reuse requirements of this subsection. The department shall submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the requirements of this subsection.

(11) The Legislature finds that the discharge of inadequately treated and managed domestic wastewater from dozens of small wastewater facilities and thousands of septic tanks and other onsite systems in the Florida Keys compromises the quality of the coastal environment, including nearshore and offshore waters, and threatens the quality of life and local economies that depend on those resources. The Legislature also finds that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for the local governments in Monroe County, including those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage, to timely complete the wastewater or sewage treatment and disposal facilities initiated under the work program of Administration Commission rule 28-20, Florida Administrative Code, and the Monroe County Sanitary Master Wastewater Plan, dated June 2000. The Legislature therefore declares that the construction and operation of comprehensive central wastewater systems in accordance with this subsection is in the public interest. To give effect to those findings, the requirements of this

subsection apply to all domestic wastewater facilities in Monroe County, including privately owned facilities, unless otherwise provided under this subsection.

- (a) The discharge of domestic wastewater into surface waters is prohibited.
- (b) Monroe County, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage in Monroe County shall complete the wastewater collection, treatment, and disposal facilities within its jurisdiction designated as hot spots in the Monroe County Sanitary Master Wastewater Plan, dated June 2000, specifically listed in Exhibits 6-1 through 6-3 of Chapter 6 of the plan and mapped in Exhibit F-1 of Appendix F of the plan. The required facilities and connections, and any additional facilities or other adjustments required by rules adopted by the Administration Commission under s. 380.0552, must be completed by December 31, 2015, pursuant to specific schedules established by the commission. Domestic wastewater facilities located outside local government and special district service areas must meet the treatment and disposal requirements of this subsection by December 31, 2015.
- (c) After December 31, 2015, all new or expanded domestic wastewater discharges must comply with the treatment and disposal requirements of this subsection and department rules.
- (d) Wastewater treatment facilities having design capacities:
 - 1. Greater than or equal to 100,000 gallons per day must provide basic disinfection as defined by department rule and the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:
 - a. Biochemical Oxygen Demand (CBOD5) of 5 mg/l.
 - b. Suspended Solids of 5 mg/l.
 - c. Total Nitrogen, expressed as N, of 3 mg/l.
 - d. Total Phosphorus, expressed as P, of 1 mg/l.
 - 2. Less than 100,000 gallons per day must provide basic disinfection as defined by department rule and the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:
 - a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
 - b. Suspended Solids of 10 mg/l.
 - c. Total Nitrogen, expressed as N, of 10 mg/l.
 - d. Total Phosphorus, expressed as P, of 1 mg/l.
- (e) Class V injection wells, as defined by department or Department of Health rule, must meet the following requirements and otherwise comply with department or Department of Health rules, as applicable:
 - 1. If the design capacity of the facility is less than 1 million gallons per day, the injection well must be at least 90 feet deep and cased to a minimum depth of 60 feet or to such greater cased depth and total well depth as may be required by department rule.
 - 2. Except as provided in subparagraph 3. for backup wells, if the design capacity of the facility is equal to or greater than 1 million gallons per day, each primary injection well must be cased to a minimum depth of 2,000 feet or to such greater depth as may be required by department rule.
 - 3. If an injection well is used as a backup to a primary injection well, the following conditions apply:
 - a. The backup well may be used only when the primary injection well is out of service because of equipment failure, power failure, or the need for mechanical integrity testing or repair;
 - b. The backup well may not be used for more than a total of 500 hours during any 5-year period unless specifically authorized in writing by the department;
 - c. The backup well must be at least 90 feet deep and cased to a minimum depth of 60 feet, or to such greater cased depth and total well depth as may be required by department rule; and
 - d. Fluid injected into the backup well must meet the requirements of paragraph (d).
- (f) The requirements of paragraphs (d) and (e) do not apply to:
 - 1. Class I injection wells as defined by department rule, including any authorized mechanical integrity tests;
 - 2. Authorized mechanical integrity tests associated with Class V wells as defined by department rule; or
 - 3. The following types of reuse systems authorized by department rule:

- a. Slow-rate land application systems;
- b. Industrial uses of reclaimed water; and
- c. Use of reclaimed water for toilet flushing, fire protection, vehicle washing, construction dust control, and decorative water features.

However, disposal systems serving as backups to reuse systems must comply with the other provisions of this subsection.

(g) For wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage but which are owned by other entities, the requirements of paragraphs (d) and (e) do not apply until January 1, 2016. Wastewater operating permits issued pursuant to this chapter and in effect for these facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system, whichever occurs first. Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements of this subsection and department rules.

(h) If it is demonstrated that a discharge, even if the discharge is otherwise in compliance with this subsection, will cause or contribute to a violation of state water quality standards, the department shall:

1. Require more stringent effluent limitations;
2. Order the point or method of discharge changed;
3. Limit the duration or volume of the discharge; or
4. Prohibit the discharge.

(i) All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by department rule.

(j) The department shall require the levels of operator certification and staffing necessary to ensure proper operation and maintenance of sewage facilities.

(k) The department may adopt rules necessary to carry out this subsection.

(l) The authority of a local government, including a special district, to mandate connection of a wastewater facility, as defined by department rule, is governed by s. 4, chapter 99-395, Laws of Florida.

History.—ss. 1, 2, 3, ch. 71-259; s. 2, ch. 71-137; s. 1, ch. 72-58; s. 271, ch. 77-147; s. 1, ch. 78-206; s. 75, ch. 79-65; s. 1, ch. 80-371; s. 1, ch. 81-246; s. 262, ch. 81-259; s. 2, ch. 86-173; s. 1, ch. 87-303; s. 71, ch. 93-213; s. 2, ch. 94-153; s. 361, ch. 94-356; s. 158, ch. 99-8; s. 25, ch. 2000-153; s. 12, ch. 2000-211; s. 6, ch. 2008-232; s. 38, ch. 2010-205; s. 73, ch. 2013-15; s. 1, ch. 2013-31; s. 17, ch. 2020-150; s. 16, ch. 2020-158.

CHAPTER 28-18

LAND PLANNING REGULATIONS FOR THE FLORIDA KEYS AREA OF CRITICAL STATE CONCERN – CITY OF MARATHON

- 28-18.300 Purpose and Effect
28-18.400 Comprehensive Plan

28-18.300 Purpose and Effect.

As provided in Sections 380.05(10) and 380.0552(7), F.S., the Comprehensive Plan of the City of Marathon shall be superseded by amendments which are proposed by Marathon and approved by the Department of Community Affairs pursuant to Sections 380.05(6) and 380.0552(9), F.S.

Rulemaking Authority 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History—New 6-17-11.

28-18.400 Comprehensive Plan.

(1) The Comprehensive Plan of the City of Marathon, as the same exists on January 1, 2011, is hereby amended to read as follows:

(2) Policy 1-3.5.18 Marathon Work Program Conditions and Objectives.

(a) The number of allocations issued annually for residential development under the Residential Building Permit Allocation System (BPAS) shall not exceed a total annual unit cap of 30, plus any available unused BPAS allocations from a previous year. Unused BPAS allocations may be retained and made available only for affordable housing and Administrative Relief from BPAS year to BPAS year. Unused market rate allocations shall be available for Administrative Relief. Any unused affordable allocations will roll over to affordable housing. This BPAS allocation represents the total number of allocations for development that may be issued during a year. A BPAS year means the twelve-month period beginning on July 13. Policy 1-3.5.18 supersedes Policy 1-3.5.2 of the City of Marathon Comprehensive Plan.

(b) No exemptions or increases in the number of allocations may be allowed, other than that which may be expressly provided for in the comprehensive plan or for which there is an existing agreement as of September 27, 2005, for affordable housing between the Department and the local government in the critical areas.

(c) Through the Permit Allocation Systems, Marathon shall direct new growth and redevelopment to areas served by a central sewer system by 2015 that has committed or planned funding sources. Committed or planned funding is funding that is financially feasible and reflected in a Capital Improvements Element approved by the Department of Community Affairs. Prior to the ranking and approval of awards for an allocation authorizing development of new principal structures, Marathon shall coordinate with the central wastewater facility provider and shall increase an applicant's score by four points for parcels served by a collection line within a central wastewater facility service area where a central wastewater treatment facility has been constructed that meets the treatment standards of Sections 381.0065(4)(l) and 403.086(10), F.S., and where treatment capacity is available. The points shall only be awarded if a construction permit has been issued for the collection system and the parcel lies within the service area of the wastewater treatment facility.

(3) Reporting and Oversight.

(a) Beginning November 30, 2011, Marathon and the Department of Community Affairs shall annually report to the Administration Commission documenting the degree to which the work program objectives for the work program year have been achieved. The Commission shall consider the findings and recommendations provided in those reports and shall determine whether progress has been achieved toward accomplishing the tasks of the work program. If the Commission determines that progress has not been made, the unit cap for residential development shall be reduced by 20 percent for the following year.

(b) If the Commission determines that progress has been made for the work program year, then the Commission shall restore the unit cap for residential development for the following year up to a maximum of 30 allocations per BPAS year.

(c) Notwithstanding any other date set forth in this plan, the dates set forth in the work program shall control where conflicts exist.

(d) Wastewater treatment and disposal in Marathon is governed by the requirements of Sections 381.0065(4)(l) and 403.086(10), F.S., as amended. Nothing in this rule shall be construed to limit the authority of the Department of Environmental Protection or Department of Health to enforce Sections 381.0065(4)(l) and 403.086(10), F.S., as amended.

(4) Policy 1-2.2.4 Hurricane Modeling.

For hurricane evacuation clearance time modeling purposes, clearance time shall begin when the Monroe County Emergency Management Coordinator issues the evacuation order for the permanent population for a hurricane that is classified as a Category 3-5 wind event or Category C-E surge event. The termination point shall be the intersection of U.S. Highway One and the Florida Turnpike in Homestead/Florida City.

(5) WORK PROGRAM.

(a) Carrying Capacity Study Implementation.

1. By July 1, 2011, Marathon shall adopt a Comprehensive Plan Policy to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any city, county, state or federal agency. Marathon shall develop a mechanism to routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least 6 months prior to the deadline for administrative relief.

2. By July 1, 2011, Marathon shall adopt Land Development Regulations to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any city, county, state or federal agency.

3. By July 1, 2011, Marathon shall amend the Comprehensive Plan to limit allocations into high quality tropical hardwood hammock.

4. By July 1, 2011, Marathon shall amend the Land Development Regulations to limit allocations into high quality tropical hardwood hammock.

5. By July 1, 2011, Marathon shall adopt a Comprehensive Plan Policy discouraging private applications for future land use map amendments which increase allowable density/intensity on lands in the Florida Keys.

6. By July 1, 2011, and each July thereafter, Marathon shall evaluate its land acquisition needs and state and federal funding opportunities and apply annually to at least one state or federal land acquisition grant program.

7. By July 1, 2012, Marathon shall enter into a memorandum of understanding with the Department of Community Affairs, Division of Emergency Management, Monroe County, Islamorada, Key West, Key Colony Beach, and Layton after a notice and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the Department of Community Affairs to accurately depict evacuation clearance times for the population of the Florida Keys.

8. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding. Marathon and the Department of Community Affairs shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities Survey, Bureau of Business and Economic Research, and other studies). The City shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.

9. By December 1, 2012, Marathon shall complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the Department of Community Affairs, Monroe County and each municipality in the Keys.

10. By December 1, 2012, the Department of Community Affairs shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The Department will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24-hour hurricane evacuation clearance time. If necessary, the Department of Community Affairs shall work with each local government to amend the respective Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.

11. By July 1, 2013, based on the Department of Community Affairs' recommendations, Marathon shall amend the current building permit allocation system (BPAS in the Comprehensive Plan and Land Development Regulations) based on infrastructure availability, level of service standards, environmental carrying capacity, and hurricane evacuation clearance time.

(b) Wastewater Implementation.

1. By July 1, 2011 and each July 1 thereafter, Marathon shall annually evaluate and allocate funding for wastewater implementation. Marathon shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. December 1, 2013, Marathon shall work with the owners of wastewater facilities and onsite systems throughout the City and the Department of Environmental Protection (DEP) and the Department of Health (DOH) to fulfill the requirements of Sections 381.0065(3)(h) and (4)(l) and 403.086(10), F.S., regarding implementation of wastewater treatment and disposal. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet 2015 treatment and disposal requirements.

3. By July 1, 2011, Marathon shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.

4. By July 1, 2011, Marathon shall continue to develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement facilities.

5. By July 1, 2011 and each year through 2013, Marathon shall annually draft a resolution requesting the issuance of a portion of the \$200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.

6. By July 1, 2011, Marathon shall develop a mechanism to provide accurate and timely information and establish Marathon's annual funding allocations necessary to provide evidence of unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.

7. By December 1, 2012, Marathon shall provide a report of addresses and the property appraiser's parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department and the Department of Community Affairs. This report shall describe the status of Marathon's enforcement action and provide the circumstances of why enforcement may or may not have been initiated.

(c) Wastewater Project Implementation.

1. Sub area 1: Knight's Key.

- a. By July 1, 2011, Marathon shall secure plant site;
- b. By December 1, 2011, Marathon shall construct Knight's Key Wastewater Plant;
- c. By May 1, 2012, Marathon shall initiate connections; and
- d. By July 1, 2012, Marathon shall complete connections (100%).

2. Sub area 2: Boot Key (non-service area).

By July 1, 2011, Marathon shall ensure completion of upgrade.

3. Sub area 3: 11 Street – 39 Street (Vaca Key West).

- a. By July 1, 2011, Marathon shall complete construction of plant;
- b. By July 1, 2011, Marathon shall complete construction of collection system;
- c. By July 1, 2011, Marathon shall initiate connections; and
- d. By July 1, 2012, Marathon shall complete connections (100%).

4. Sub area 4: Gulfside 39 Street (Vaca Key Central).

By July 1, 2013, Marathon shall complete connections (100%).

5. Sub area 5: Little Venice (60 Street – Vaca Cut East).

- a. By July 1, 2012, Marathon shall complete construction of collection system;
- b. By July 1, 2012, Marathon shall initiate connections for Phase II;
- c. By July 1, 2013, Marathon shall complete connections (100%) for Phase II.

6. Sub area 6-Vaca Cut-Coco Plum (Fat Key Deer West).

By July 1, 2011, Marathon shall complete connections (100%).

7. Sub area 7: Tom Harbor Bridge-Grassy Key.

- a. By July 1, 2012, Marathon shall complete construction of plant;
- b. By July 1, 2012, Marathon shall bid and award design of collection system;
- c. By July 1, 2012, Marathon shall construction of collection system;
- d. By July 1, 2012, Marathon shall initiate connections; and
- e. By July 1, 2013, Marathon shall complete connections (100%).

(d) Stormwater Treatment Facilities.

1. Beginning July 1, 2011 and each July 1 thereafter Marathon shall annually evaluate and allocate funding for stormwater implementation. Marathon shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. Beginning July 1, 2011 and each July 1 thereafter, Marathon shall annually apply for stormwater grants from the South Florida Water Management District.

3. Sub area 3: 11 Street – 37 Street (Vaca Key West): By July 1, 2011, complete Stormwater Treatment Facilities simultaneously with wastewater projects, including the direct outfall retrofits for 27th Street and 24th Street.

4. Sub area 5: Little Venice (60 Street – Vaca Cut East): By July 1, 2012, complete Stormwater Treatment Facilities simultaneously with wastewater projects.

5. Sub area 7: Tom Harbor Bridge-Grassy Key: By July 1, 2012, complete Stormwater Treatment Facilities simultaneously with wastewater projects.

6. By July 1, 2012, Marathon shall eliminate direct outfall retrofits for: 27th Street, Sombrero Islands, 24th Street, and 52nd Street.

CHAPTER 28-19

LAND PLANNING REGULATIONS FOR THE FLORIDA KEYS AREA OF CRITICAL STATE CONCERN, ISLAMORADA, VILLAGE OF ISLANDS

- | | |
|-----------|-------------------------------|
| 28-19.100 | Purpose and Effect |
| 28-19.200 | Comprehensive Plan (Repealed) |
| 28-19.310 | Comprehensive Plan |

28-19.100 Purpose and Effect.

(1) The purpose of this Chapter is to amend the Transitional Comprehensive Plan of Islamorada, Village of Islands, within the Florida Keys Area of Critical State Concern, pursuant to Section 380.0552(9), F.S.

(2) In order to provide an accurate record of the amendments approved by this chapter, each set of amendments is set forth in a separate rule section. If any provision of the comprehensive plan is amended by two rule sections, the latest amendment shall control.

(3) As provided in Sections 380.05(10) and 380.0552(7), F.S., the Transitional Comprehensive Plan of the Village adopted herein shall be superseded by amendments which are proposed by the Village and approved by the Department of Community Affairs pursuant to Sections 380.05(6) and 380.0552(9), F.S. The Village Transitional Comprehensive Plan shall be superseded by the new Village Comprehensive Plan upon approval by the Department of Community Affairs pursuant to Sections 380.05(6) and 380.0552(9), F.S.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 7-26-99.

28-19.200 Comprehensive Plan.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 7-26-99, Repealed 1-12-14.

28-19.310 Comprehensive Plan.

(1) The Comprehensive Plan of Islamorada, Village of Islands, as the same exists on January 1, 2011, is hereby amended to read as follows:

(2) Policy 1-3.1.1 Islamorada Work Program Conditions and Objectives.

(a) The number of permits issued annually for residential development under the Residential Building Permit Allocation System (BPAS) shall not exceed a total annual unit cap of 22 market rate units and 6 affordable housing units, plus any available unused BPAS allocations from the previous BPAS year. Unused BPAS allocations may be retained and made available only for affordable housing and Administrative Relief from BPAS year to BPAS year. Unused market rate allocations shall be available for Administrative Relief. Any unused affordable allocations will roll over to affordable housing. This BPAS allocation represents the total number of allocations for development that may be issued during a year. A BPAS year means the twelve-month period beginning on July 13.

(b) Beginning November 30, 2011, the Village and the Department of Community Affairs shall annually report to the Administration Commission documenting the degree to which the work program objectives for the work program year have been achieved. The Commission shall consider the findings and recommendations provided in those reports and shall determine whether progress has been achieved toward accomplishing the tasks of the work program. If the Commission determines that progress has not been made, the unit cap for residential development shall be reduced by 20 percent for the following year.

(3) Policy 2-1. 2.10 Hurricane Modeling.

For hurricane evacuation clearance time modeling purposes, clearance time shall begin when the Monroe County Emergency Management Coordinator issues the evacuation order for the permanent population for a hurricane that is classified as a Category 3-5 wind event or Category C-E surge event. The termination point shall be the intersection of U.S. Highway One and the Florida Turnpike in Homestead/Florida City.

(4) Reporting and Oversight.

(a) Through the Permit Allocation Systems, Islamorada shall direct new growth and redevelopment to areas served by or that would be served a central sewer system by December 2015, that has committed funding or planned funding sources. Committed or planned funding is funding that is financially feasible and reflected in a Capital Improvements Element approved by the Department of Community Affairs. Prior to the ranking and approval of awards for an allocation authorizing development of new principal structures, the Village of Islamorada shall coordinate with the central wastewater facility provider and shall increase an applicant's score by two points for parcels served by a collection line within a central wastewater facility service area where a central wastewater treatment facility has been constructed that meets the treatment standards of Sections 381.0065(4)(1) and 403.086(10), F.S., and where treatment capacity is available. The points shall only be awarded if a

construction permit has been issued for the collection system and the parcel lies within the service area of the wastewater treatment facility.

(b) If the Commission determines that progress has been made for the work program year, then the Commission shall restore the unit cap for residential development for the following year up to a maximum of 28 allocations per BPAS year.

(c) Wastewater treatment and disposal in Islamorada is governed by the requirements of Sections 381.0065(4)(1) and 403.086(10), F.S. Nothing in this rule shall be construed to limit the authority of the Department of Environmental Protection or Department of Health to enforce Sections 381.0065(4)(1) and 403.086(10), F.S.

(d) Notwithstanding any other date set forth in this plan, the dates set forth in the work program shall control where conflicts exist.

(5) WORK PROGRAM.

(a) Carrying Capacity Implementation.

1. By July 1, 2011 and each July 1 thereafter, Islamorada shall evaluate its land acquisition needs and state and federal funding opportunities and apply to at least one state or federal land acquisition grant program.

2. By July 1, 2012, Islamorada shall enter into a memorandum of understanding with the Department of Community Affairs, Division of Emergency Management, Marathon, Monroe, Key West, Key Colony Beach, and Layton after a notice, public workshop and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the Department to accurately depict evacuation clearance times for the population of the Florida Keys.

3. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding. Islamorada and the Department of Community Affairs shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities Survey, Bureau of Business and Economic Research, and other studies). Islamorada shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.

4. By July 1, 2012, Islamorada shall complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the Department of Community Affairs, Monroe County and each municipality in the Keys.

5. By July 1, 2012, the Department of Community Affairs shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The Department will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24-hour evacuation clearance time. If necessary, Department of Community Affairs shall work with each local government to amend the Comprehensive Plans to reflect revised allocation rates and distributions or propose rule making to the Administration Commission.

6. By July 1, 2013, based on the Department of Community Affairs' recommendations, Islamorada shall amend the current building permit allocation system (BPAS in the Comprehensive Plan and Land Development Regulations) based on infrastructure availability, level of service standards, environmental carrying capacity constraints, and hurricane evacuation clearance time.

(b) Wastewater Implementation.

1. Beginning July 1, 2011 and each July 1 thereafter, Islamorada shall identify any funding for wastewater implementation. Islamorada shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. By December 1, 2013, Islamorada shall provide a final determination of non-service areas requiring upgrade to meet Sections 381.0065(4)(l) and 403.086(10), F.S., wastewater treatment and disposal standards. This shall be in the form of a resolution including a map of the non-service areas.

3. By December 1, 2013, Islamorada shall work with the owners of wastewater facilities and on site systems throughout the Village and the Department of Environmental Protection (DEP) and the Department of Health (DOH) to fulfill the requirements of Sections 381.0065(3)(h) and (4)(l) and 403.086(10), F.S., regarding implementation of wastewater treatment and disposal systems. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet 2015 treatment and disposal standards.

4. By July 1, 2011 and by July 1 of each year thereafter, Islamorada shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.

5. By September 1, 2011, Islamorada shall develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities.

6. By July 1, 2011 and each July 1 thereafter through 2013, Islamorada shall annually draft a resolution requesting the issuance of a portion of the \$200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.

7. By July 1, 2011 and each July 1 thereafter through 2013, Islamorada shall develop a mechanism to provide accurate and timely information and establish Islamorada's annual funding allocations necessary to provide unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.

8. By December 1, 2013, Islamorada shall provide a report of addresses and the property appraiser's parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department, Department of Environmental Protection and the Department of Community Affairs. This report shall describe the status of Islamorada's enforcement action and provide the circumstances of why enforcement may or may not have been initiated.

(c) Wastewater Project Implementation.

1. By June 1, 2011, Islamorada shall provide a wastewater financing plan to the Department of Community Affairs and Administration Commission.

2. By July 1, 2011, Islamorada shall conclude negotiations with Key Largo Wastewater Treatment District for treatment capacity.

3. By July 1, 2011, Islamorada shall advertise for proposal for design build operate finance construction of Village-wide wastewater system.

4. By July 1, 2011 submit a copy of contract agreement with Key Largo Wastewater District documenting acceptance of effluent or alternative plan with construction of wastewater treatment plants in Village that ensures completion and connection of customers by December 2015.

5. By July 1, 2011, Islamorada shall make available to its customers an additional 700 connections (Phase II) to the North Plantation Key Wastewater Treatment Plant (WWTP).

6. By September 1, 2011, Islamorada shall select the design build operate finance contractor for the Village-wide wastewater system.

7. By October 1, 2011, Islamorada shall submit a wastewater construction status report to the Department of Community Affairs and the Administration Commission which includes substantial completion of construction prior to January 1, 2015 and final completion prior to July 1, 2015.

8. By September 1, 2013, Islamorada shall complete final design of the Village-wide wastewater system.

9. By December 1, 2013, Islamorada shall commence construction of the Village-wide wastewater system.

10. By June 1, 2014, Islamorada shall make available to its customers 25% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.

11. By December 1, 2014, Islamorada shall make available to its customers 50% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.

12. By June 1, 2015, Islamorada shall make available to its customers 75% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.

13. By December 1, 2015, Islamorada shall make available to its customers 100% of the Equivalent Dwelling Unit (EDU) connections to the Village-wide wastewater system.

Rulemaking Authority 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History—New 6-17-11.

CHAPTER 28-20

LAND PLANNING REGULATIONS FOR THE FLORIDA KEYS AREA OF CRITICAL STATE CONCERN – MONROE COUNTY

28-20.019	Purpose and Effect
28-20.020	Comprehensive Plan (Repealed)
28-20.021	Land Development Regulations (Repealed)
28-20.022	Second Administration Commission Amendments to the Comprehensive Plan (Repealed)
28-20.023	Second Administration Commission Amendments to Land Development Regulations (Repealed)
28-20.024	Third Administration Commission Amendments to Land Development Regulations (Repealed)
28-20.025	Land Development Regulations (Repealed)
28-20.100	Comprehensive Plan (Repealed)
28-20.110	Comprehensive Plan (Repealed)
28-20.120	Land Development Regulations (Repealed)
28-20.140	Comprehensive Plan

28-20.019 Purpose and Effect.

(1) The purpose of this Chapter is to establish land development regulations and a local comprehensive plan applicable within the Florida Keys Area of Critical State Concern, pursuant to Section 380.05(8), F.S. It is the intent of the Administration Commission that this rule shall supplement those land development regulations and those portions of the comprehensive plan approved by the Department of Community Affairs in Chapter 9J-14, F.A.C. This chapter and Chapter 9J-14, F.A.C., comprise the comprehensive plan and land development regulations for the Florida Keys Area of Critical State Concern. To the extent that existing ordinances are not adopted in this rule or approved in Chapter 9J-14, F.A.C., such ordinances are not deemed to be “land development regulations” within the definition of Section 380.031(8), F.S.

(2) In order to provide an accurate record of the amendments approved by this chapter, each set of amendments is set forth in a separate rule section. If any provision of the comprehensive plan or the land development regulations is amended by two rule sections, the latest amendment shall control.

(3) As provided in Section 380.05(10), F.S., the comprehensive plan and land development regulations adopted herein shall be superseded by regulations or amendments which are proposed by Monroe County and approved by the Department of Community Affairs under the procedures found in Section 380.05(6), F.S.

(4) Land Development Regulations, including Official Land Use District Maps, shall be construed to implement the provisions of Chapter 163, F.S. (1985) and Chapter 86-170, Laws of Florida (1986).

(5) All development, in addition to being consistent with the provisions of these land development regulations which include the official land use district maps, shall be consistent with the goals, policies and objectives of the comprehensive plan. All land use decisions based upon the map designations must be consistent with the text of volumes I and II.

(6) The purpose of Part II of this chapter is to adopt amendments to the Monroe County Comprehensive Plan adopted by Monroe County Ordinance No. 016-1993, and approved by the Department of Community Affairs in Rules 9J-14.020-.023, F.A.C., including maps, consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern, pursuant to Sections 380.0552(7) and (9), F.S. The Monroe County Comprehensive Plan adopted by Ordinance 016-1993 and approved by the Department of Community Affairs in Rules 9J-14.020-.023, F.A.C., supersedes the Comprehensive Plan addressed in Part I of this chapter.

Rulemaking Authority 380.05(8), 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 9-15-86, Amended 10-5-89, 1-2-96.

28-20.020 Comprehensive Plan.

Rulemaking Authority 380.05(8) FS. Law Implemented 380.05(8), 380.0552(4) FS. History—New 9-15-86, Repealed 1-12-14.

28-20.021 Land Development Regulations.

Rulemaking Authority 380.05(8) FS. Law Implemented 380.05(8), 380.0552(4) FS. History—New 9-15-86, Repealed 1-12-14.

28-20.022 Second Administration Commission Amendments to the Comprehensive Plan.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 10-5-89, Repealed 1-12-14.

28-20.023 Second Administration Commission Amendments to Land Development Regulations.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 10-5-89, Repealed 1-12-14.

28-20.024 Third Administration Commission Amendments to Land Development Regulations.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 8-12-92, Repealed 1-12-14.

28-20.025 Land Development Regulations.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 1-2-96, Repealed 1-12-14.

28-20.100 Comprehensive Plan.

Rulemaking Authority 380.05(8), 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 1-2-96, Amended 7-17-97, 7-26-99, 10-29-02, Repealed 1-12-14.

28-20.110 Comprehensive Plan.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 9-27-05, Repealed 1-12-14.

28-20.120 Land Development Regulations.

Rulemaking Authority 380.0552(9) FS. Law Implemented 380.0552 FS. History—New 9-27-05, Repealed 1-12-14.

28-20.140 Comprehensive Plan.

(1) The Monroe County Comprehensive Plan Policy Document, as the same exists on January 1, 2011, is hereby amended to read as follows:

(2) Policy 101.2.13 Monroe County Work Program Conditions and Objectives.

(a) Monroe County shall establish and maintain a Permit Allocation System for new residential development. The Permit Allocation System shall supersede Policy 101.2.1.

(b) The number of permits issued annually for residential development under the Rate of Growth Ordinance shall not exceed a total annual unit cap of 197, plus any available unused ROGO allocations from a previous ROGO year. Each year's ROGO allocation of 197 units shall be split with a minimum of 71 units allocated for affordable housing in perpetuity and market rate allocations not to exceed 126 residential units per year. Unused ROGO allocations may be retained and made available only for affordable housing and Administrative Relief from ROGO year to ROGO year. Unused allocations for market rate shall be available for Administrative Relief. Any unused affordable allocations will roll over to affordable housing. A ROGO year means the twelve-month period beginning on July 13.

(c) This allocation represents the total number of allocations for development that may be issued during a ROGO year. No exemptions or increases in the number of allocations may be allowed, other than that which may be expressly provided for in the comprehensive plan or for which there is an existing agreement as of September 27, 2005, for affordable housing between the Department and the local government in the critical areas.

(d) Through the Permit Allocation Systems, Monroe County shall direct new growth and redevelopment to areas served or that would be served by a central sewer system by December 2015 that has committed or planned funding. Committed or planned funding is funding that is financially feasible and reflected in a Capital Improvements Element approved by the Department of Community Affairs. Prior to the ranking and approval of awards for an allocation authorizing development of new principal structures, Monroe County, shall coordinate with the central wastewater facility provider and shall increase an applicant's score by four points for parcels served by a collection line within a central wastewater facility service area where a central wastewater treatment facility has been constructed that meets the treatment standards of Section 403.086(10), F.S., and where treatment capacity is available. The points shall only be awarded if a construction permit has been issued for the collection system and the parcel lies within the service area of the wastewater treatment facility.

(3) Reporting and Oversight.

(a) Beginning November 30, 2011, Monroe County and the Department of Community Affairs shall annually report to the Administration Commission documenting the degree to which the work program objectives for the work program year have been achieved. The Commission shall consider the findings and recommendations provided in those reports and shall determine whether progress has been achieved. If the Commission determines that progress has not been made, the unit cap for residential development shall be reduced by 20 percent for the following ROGO year.

(b) If the Commission determines that progress has been made for the work program year, then the Commission may restore the unit cap for residential development for the following year up to a maximum of 197 allocations per ROGO year.

(c) Notwithstanding any other date set forth in this plan, the dates set forth in the work program shall control where conflicts exist.

(d) Wastewater treatment and disposal in Monroe County is governed by the requirements of Sections 381.0065(4) and 403.086(10), F.S. Nothing in this rule shall be construed to limit the authority of the Department of Environmental Protection or the Department of Health to enforce Sections 381.0065(4) and 403.086(10), F.S.

(4) Policy 216.1.19. Hurricane Modeling.

For the purposes of hurricane evacuation clearance time modeling purposes, clearance time shall begin when the Monroe County Emergency Management Coordinator issues the evacuation order for permanent residents for a hurricane that is classified as a Category 3-5 wind event or Category C-E surge event. The termination point shall be U.S. Highway One and the Florida Turnpike in Homestead/Florida City.

(5) WORK PROGRAM.

(a) Carrying Capacity Study Implementation.

1. By July 1, 2012, Monroe County shall adopt the conservation planning mapping (the Tier Zoning Overlay Maps and System) into the Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee with the adjusted Tier boundaries.

2. By July 1, 2012, Monroe County shall adjust the Tier I and Tier IIIA (SPA) boundaries to more accurately reflect the criteria for that Tier as amended by Final Order DCA07-GM166 and implement the Florida Keys Carrying Capacity Study, utilizing the updated habitat data, and based upon the recommendations of the Tier Designation Review Committee Work Group.

3. By July 1, 2012, Monroe County shall create Goal 106 to complete the 10 Year Work Program found in Rule 28-20.110, F.A.C., and to establish objectives to develop a build-out horizon in the Florida Keys and adopt conservation planning mapping into the Comprehensive Plan.

4. By July 1, 2012, Monroe County shall create Objective 106.2 to adopt conservation planning mapping (Tier Maps) into the Monroe Comprehensive Plan based upon the recommendations of the Tier Designation Review Committee Work Group.

5. By July 1, 2012, Monroe County shall adopt Policy 106.2.1 to require the preparation of updated habitat data and establish a regular schedule for continued update to coincide with evaluation and appraisal report timelines.

6. By July 1, 2012, Monroe County shall adopt Policy 106.2.2 to establish the Tier Designation Work Group Review Committee to consist of representatives selected by the Florida Department of Community Affairs from Monroe County, Florida Fish & Wildlife Conservation Commission, United States Fish & Wildlife Service, Department of Environmental Protection and environmental and other relevant interests. This Committee shall be tasked with the responsibility of Tier designation review utilizing the criteria for Tier placement and best available data to recommend amendments to ensure implementation of and adherence to the Florida Keys Carrying Capacity Study. These proposed amendments shall be recommended during 2009 and subsequently coincide with the Evaluation and Appraisal report timelines beginning with the second Evaluation and Appraisal review which follows the adoption of the revised Tier System and Maps as required above adopted in 2011. Each evaluation and appraisal report submitted following the 2011 evaluation and appraisal report shall also include an analysis and recommendations based upon the process described above.

7. By July 1, 2012 and each July thereafter, Monroe County and the Monroe County Land Authority shall submit a report annually to the Administration Commission on the land acquisition funding and efforts in the Florida Keys to purchase Tier I and Big Pine Key Tier II lands and the purchase of parcels where a Monroe County building permit allocation has been denied for four (4) years or more. The report shall include an identification of all sources of funds and assessment of fund balances within those sources available to the County and the Monroe County Land Authority.

8. By July 1, 2012, Monroe County shall adopt Land Development Regulations to require that administrative relief in the form of the issuance of a building permit is not allowed for lands within the Florida Forever targeted acquisition areas or Tier I lands unless, after 60 days from the receipt of a complete application for administrative relief, it has been determined the parcel will not be purchased by any county, state, federal or any private entity. The County shall develop a mechanism to routinely notify the Department of Environmental Protection of upcoming administrative relief requests at least 6 months prior to the deadline for administrative relief.

9. By July 1, 2012, in order to implement the Florida Keys Carrying Capacity Study, Monroe County shall adopt a Comprehensive Plan Policy to discourage private applications for future land use changes which increase allowable density/intensity.

10. By July 1, 2011, Monroe County shall evaluate its land acquisition needs and state and federal funding opportunities and apply annually to at least one state or federal land acquisition grant program.

11. By July 1, 2012, Monroe County shall enter into a memorandum of understanding with the Department of Community Affairs, Division of Emergency Management, Marathon, Islamorada, Key West, Key Colony Beach and Layton after a notice

and comment period of at least 30 days for interested parties. The memorandum of understanding shall stipulate, based on professionally acceptable data and analysis, the input variables and assumptions, including regional considerations, for utilizing the Florida Keys Hurricane Evacuation Model or other models acceptable to the Department to accurately depict evacuation clearance times for the population of the Florida Keys.

12. By July 1, 2012, the Florida Keys Hurricane Evacuation Model shall be run with the agreed upon variables from the memorandum of understanding to complete an analysis of maximum build-out capacity for the Florida Keys Area of Critical State Concern, consistent with the requirement to maintain a 24-hour evacuation clearance time and the Florida Keys Carrying Capacity Study constraints. This analysis shall be prepared in coordination with the Department of Community Affairs and each municipality in the Keys.

13. By July 1, 2012, the County and the Department of Community Affairs shall update the data for the Florida Keys Hurricane Evacuation Model as professionally acceptable sources of information are released (such as the Census, American Communities Survey, Bureau of Economic and Business Research, and other studies). The County shall also evaluate and address appropriate adjustments to the hurricane evacuation model within each Evaluation and Appraisal Report.

14. By July 1, 2012, the Department of Community Affairs shall apply the derived clearance time to assess and determine the remaining allocations for the Florida Keys Areas of Critical State Concern. The Department will recommend appropriate revisions to the Administration Commission regarding the allocation rates and distribution of allocations to Monroe County, Marathon, Islamorada, Key West, Layton and Key Colony Beach or identify alternative evacuation strategies that support the 24 hour evacuation clearance time. If necessary, the Department of Community Affairs shall work with each local government to amend the Comprehensive Plans to reflect revised allocation rates and distributions or propose rulemaking to the Administration Commission.

15. By July 1, 2013, if necessary, the Department of Community Affairs shall work with each local government to amend the Comprehensive Plan to reflect revised allocation rates and distribution or propose rule making to the Administration Commission.

(b) Wastewater Implementation.

1. By July 1, 2011, Monroe County shall annually evaluate and allocate funding for wastewater implementation. Monroe County shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.

2. By December 1, 2013, Monroe County shall work with the owners of wastewater facilities and onsite systems throughout the County and the Department of Health (DOH) and the Department of Environmental Protection (DEP) to fulfill the requirements of Sections 403.086(10) and 381.0065(3)(h) and (4)(l), F.S., regarding implementation of wastewater treatment and disposal. This will include coordination of actions with DOH and DEP to notify owners regarding systems that will not meet the 2015 treatment and disposal standards.

3. By July 1, 2011, Monroe County shall annually draft a resolution requesting the issuance of \$50 million of the \$200 million of bonds authorized under Section 215.619, F.S., and an appropriation of sufficient debt service for those bonds, for the construction of wastewater projects within the Florida Keys.

4. By July 1, 2011, Monroe County shall develop a mechanism to provide accurate and timely information and establish the County's annual funding allocations necessary to provide evidence of unmet funding needs to support the issuance of bonds authorized under Section 215.619, F.S., and to assure the timely completion of work as necessary to fulfill any terms and conditions associated with bonds.

5. By July 1, 2011, Monroe County shall evaluate its wastewater needs and state and federal funding opportunities and apply annually to at least one state or federal grant program for wastewater projects and connections.

6. By July 1, 2011, Monroe County shall develop and implement local funding programs necessary to timely fund wastewater construction and future operation, maintenance and replacement of facilities.

7. By December 1, 2013, the County shall provide a report of addresses and the property appraiser's parcel numbers of any property owner that fails or refuses to connect to the central sewer facility within the required timeframe to the Monroe County Health Department, Department of Environmental Protection and the Department of Community Affairs. This report shall describe the status of the County's enforcement action.

(c) Wastewater Project Implementation.

1. Key Largo Wastewater Treatment Facility. Key Largo Wastewater Treatment District is responsible for wastewater treatment in its service area and the completion of the Key Largo Wastewater Treatment Facility.

- a. By July 1, 2012, Monroe County shall complete construction of the South Transmission Line;
- b. By July 1, 2013, Monroe County shall complete design of Collection basin C, E, F, G, H, I, J and K;
- c. By July 1, 2012, Monroe County shall complete construction of Collection basins E-H;
- d. By December 1, 2011, Monroe County shall schedule construction of Collection basins I-K;
- e. By July 1, 2011, Monroe County shall complete construction of Collection basins I-K;
- f. By July 1, 2011, Monroe County shall complete 50% of hook-ups to Key Largo Regional WWTP;
- g. By July 1, 2012, Monroe County shall complete 75% of hook-ups to Key Largo Regional WWTP;

- h. By July 1, 2013, Monroe County shall complete all remaining connections to Key Largo Regional WWTP.
 - 2. Hawk's Cay, Duck Key and Conch Key Wastewater Treatment Facility.
 - a. By July 1, 2012, Monroe County shall complete construction of Hawk's Cay WWTP upgrade/expansion, transmission and collection system;
 - b. By July 1, 2013, Monroe County shall complete construction of Duck Key collection system;
 - c. By July 1, 2012, Monroe County shall initiate property connections to Hawk's Cay WWTP;
 - d. By December 1, 2012, Monroe County shall complete 50% of hook-ups to Hawk's Cay WWTP;
 - e. By July 1, 2013, Monroe County shall complete 75% of hook-ups to Hawk's Cay WWTP; and
 - f. By July 1, 2014, Monroe County shall complete all remaining connections to Hawk's Cay WWTP.
 - 3. South Lower Keys Wastewater Treatment Facility (Big Coppitt Regional System).
 - a. By July 1, 2012, Monroe County shall complete 75% hookups to South Lower Keys WWTP; and
 - b. By July 1, 2013, Monroe County shall complete all remaining connections to the South Lower Keys WWTP.
 - 4. Cudjoe Regional Wastewater Treatment Facility.
 - a. By July 1, 2011, Monroe County shall complete planning and design documents for the Cudjoe Regional Wastewater Treatment Facility, the Central Area (Cudjoe, Summerland, Upper Sugarloaf) collection system and the Central Area Transmission Main;
 - b. By October 1, 2012, Monroe County shall initiate construction of Wastewater Treatment Facility, Central Area Collection System and Central Area Transmission Main;
 - c. By July 1, 2014, Monroe County shall initiate construction of Wastewater Treatment Facility, Central Area Collection System and Central Area Transmission Main;
 - d. By February 1, 2012, Monroe County shall complete construction of Wastewater Treatment, Outer Area Collection System and Transmission Main;
 - e. By February 1, 2015, Monroe County shall complete construction of Outer Area collection and transmission main;
 - f. By July 1, 2014, Monroe County shall initiate property connections – complete 25% of hook-ups to Cudjoe Regional WWTP;
 - g. By July 1, 2015, Monroe County shall complete 50% of hook-ups to Cudjoe Regional WWTP; and
 - h. By December 1, 2015, Monroe County shall complete remaining hook-ups to Cudjoe Regional WWTP.
- (d) Stormwater Treatment Facilities.
 - 1. By July 1, 2011, Monroe County shall evaluate and allocate funding for stormwater implementation. Monroe County shall identify any funding in the annual update to the Capital Improvements Element of the Comprehensive Plan.
 - 2. By July 1, 2011, Monroe County shall apply for stormwater grants from the South Florida Water Management District.
 - 3. By July 1, 2011, Monroe County shall complete Card Sound Road stormwater improvements.

Rulemaking Authority 380.0552(9), 380.05(22) FS. Law Implemented 380.0552 FS. History—New 6-17-11.