



## CITY COUNCIL AGENDA STATEMENT

**Meeting Date:** December 10, 2024

**To:** Honorable Mayor and City Council

**From:** George Garrett, City Manager

**Agenda Item:** **Resolution 2024-125**, Identifying The Approximate Number Of Vacant Buildable Residential Properties Within The City Of Marathon; Relating To The State Department Of Commerce's 2023 Hurricane Evacuation Clearance Times Summary And The Building Permit Allocation System (BPAS); Requiring That This Resolution Be Provided To Appropriate Staff Of The Monroe County Board Of County Commissioners To Be Included As Part Of Their Collaborative Decision Making Process On The Same Subject; And Directing Staff To Take Necessary Actions To Provide This Resolution To The Florida Legislature During The 2025 Legislative Session; Providing For Severability; And Providing For An Effective Date.

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### **BACKGROUND**

The Florida Legislature and the Administration Commission have included the City of Marathon and all other jurisdictions except the City of Key West within the designated Florida Keys Area of Critical State Concern (Section 380.05, 380.0552, Florida Statutes). The Florida Legislature and the Administration Commission have included the City of Key West within the designated Key West Area of Critical State Concern (Rule 28-36, F.A.C.).

The Florida Legislature and the Administration Commission have mandated that the City of Marathon, Florida include within the goals, objectives, and policies of its Comprehensive Plan measures to protect public safety and welfare in the event of a hurricane, by maintaining an evacuation clearance time for permanent residents of no more than 24 hours (Section 380.0552 (9) (a) 2., Florida Statutes; Rule 28-18.400 (5) (a) 4. and 5., F.A.C.). The Florida Legislature further mandated that the hurricane evacuation clearance time for Monroe County and other local governments within the Florida Keys Areas of Critical State Concern (ACSC) and the Key West Area of Critical State Concern shall be determined by a state-approved hurricane evacuation study, conducted in accordance with a professionally accepted methodology (Rule 28-18.400 (5) (a), F.A.C. and Rule 28-36, F.A.C.).

Hurricane Evacuation Clearance Times are the basis for the Florida Keys Area of Critical State Concern's Building Permit Allocation System (Rate of Growth Ordinance), and updated data may determine whether additional residential units will be authorized by the State of Florida beyond the existing allocation. The Florida Department of Commerce has provided different clearance time and BPAS scenarios, based on its data, input variables, and assumptions as set forth in the Clearance Times Summary, attached as Exhibit A. The Summary depends on several hurricane evacuation scenarios with future allocations ranging from zero (0) additional units to 7,954 additional units. These include columns where evacuation was modeled both with and without of Key West residents; and with mobile home residents evacuated in both Phase 1

and in Phase 2. In order to accurately depict evacuation clearance times for the population of the Keys ACSCs, City of Key West residents are now included in the model and mobile home residents in Monroe County are modeled as evacuated in Phase 1 (early phase) of the evacuation with the tourists due to the less substantial construction and limited elevation of mobile homes, which the state treats as vehicles.

The City of Marathon, Florida acknowledges and accepts the work completed in 2023 in the hurricane evacuation model whose general results are presented in Exhibit A. The City of Marathon supports Monroe County’s deliberative approach in not yet accepting the recent 2023 US 1 Arterial Travel Time and Delay Study for travel times from Key West to Key Largo.

The City has significant concerns related to “takings” liability in light of recent decisions rendered by the 3<sup>rd</sup> District Court of Appeals for the State of Florida. The City holds applications for 65 market rate BPAS allocations and 53 affordable BPAS allocations. Among the 118 applications for BPAS allocations, 53 have reached a point at which they could potentially request Administrative Relief BPAS allocations of which there are only 12. Recent estimates of remaining vacant parcels in Marathon, as provided in Exhibit B, indicate that there are approximately 700 vacant parcels within the City, 560 of which are estimated as buildable. Thirteen (13) RH zoned and 42 RM zoned vacant parcels are large enough to allow more than one residence per parcel. Thirteen (13) RH zoned parcels are large enough to allow 70 residential units while the RM zoned parcels would allow up to 149 residential units. Based on the analysis above, the City will require 724 allocations. Assuming that we will require approximately fifty (50) percent more units for affordable workforce housing, then the City will require approximately 1,086 residential allocations.

The City is committed to continuing to work with the County and each of the other municipalities to develop a positive future scenario for BPAS (ROGO). Such scenario should seek a minimum 30-year BPAS (ROGO) horizon and operate within any current and future Level Of Service (LOS) and environmental constraints. The City has also indicated that future allocations should prioritize owner-occupied residences and workforce housing through strongly worded revisions to each of the Keys jurisdictions Comprehensive Plans. The City Council has indicated that we must work on this scenario and a potential Legislative modification this year and during this Legislative Session,

**CONSISTENCY CHECKLIST:**

	<b>Yes</b>	<b>No</b>
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other – 2010 Sewer Mandate	<u>      </u>	<u>  X  </u>

**FISCAL NOTE:**

None

**APPROVED BY FINANCE DIRECTOR:**

NA

**RECOMMENDATION:** Approval

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2024-125**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, IDENTIFYING THE APPROXIMATE NUMBER OF VACANT BUILDABLE RESIDENTIAL PROPERTIES WITHIN THE CITY OF MARATHON; RELATING TO THE STATE DEPARTMENT OF COMMERCE'S 2023 HURRICANE EVACUATION CLEARANCE TIMES SUMMARY AND THE BUILDING PERMIT ALLOCATION SYSTEM (BPAS); REQUIRING THAT THIS RESOLUTION BE PROVIDED TO APPROPRIATE STAFF OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO BE INCLUDED AS PART OF THEIR COLLABORATIVE DECISION MAKING PROCESS ON THE SAME SUBJECT; AND DIRECTING STAFF TO TAKE NECESSARY ACTIONS TO PROVIDE THIS RESOLUTION TO THE FLORIDA LEGISLATURE DURING THE 2025 LEGISLATIVE SESSION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Legislature and the Administration Commission have included the City of Marathon and all other jurisdictions except the City of Key West within the designated Florida Keys Area of Critical State Concern (Section 380.05, 380.0552, Florida Statutes); and

**WHEREAS**, the Florida Legislature and the Administration Commission have included the City of Key West within the designated Key West Area of Critical State Concern (Rule 28-36, F.A.C.); and

**WHEREAS**, the Florida Legislature and the Administration Commission have mandated that the City of Marathon, Florida include within the goals, objectives, and policies of its Comprehensive Plan measures to protect public safety and welfare in the event of a hurricane, by maintaining an evacuation clearance time for permanent residents of no more than 24 hours (Section 380.0552 (9) (a) 2., Florida Statutes; Rule 28-18.400 (5) (a) 4. and 5., F.A.C.); and

**WHEREAS**, the Florida Legislature further mandated that the hurricane evacuation clearance time for Monroe County and other local governments within the Florida Keys Areas of Critical State Concern (ACSC) and the Key West Area of Critical State Concern shall be determined by a state-approved hurricane evacuation study, conducted in accordance with a professionally accepted methodology (Rule 28-18.400 (5) (a), F.A.C. and Rule 28-36, F.A.C.); and

**WHEREAS**, Hurricane Evacuation Clearance Times are the basis for the Florida Keys Area of Critical State Concern's Building Permit Allocation System (Rate of Growth Ordinance), and updated data may determine whether additional residential units will be authorized by the State of Florida beyond the existing allocation; and

**WHEREAS**, the Florida Department of Commerce has provided different clearance time and BPAS scenarios, based on its data, input variables, and assumptions as set forth in the

Clearance Times Summary, attached as Exhibit A. The Summary depends on several hurricane evacuation scenarios with future allocations ranging from zero (0) additional units to 7,954 additional units. These include columns where evacuation was modeled both with and without of Key West residents; and with mobile home residents evacuated in both Phase 1 and in Phase 2; and

**WHEREAS**, in order to accurately depict evacuation clearance times for the population of the Keys ACSCs, City of Key West residents are now included in the model and mobile home residents in Monroe County are modeled as evacuated in Phase 1 (early phase) of the evacuation with the tourists due to the less substantial construction and limited elevation of mobile homes, which the state treats as vehicles; and

**WHEREAS**, the City of Marathon, Florida acknowledges and accepts the work completed in 2023 in the hurricane evacuation model whose general results are presented in Exhibit A; and

**WHEREAS**, the City of Marathon supports Monroe County's deliberative approach in not yet accepting the recent 2023 US 1 Arterial Travel Time and Delay Study for travel times from Key West to Key Largo; and

**WHEREAS**, the City of Marathon has clear "takings" liability as BPAS allocations will have all been distributed during 2025; and

**WHEREAS**, the City has significant concerns related to "takings" liability in light of recent decisions rendered by the 3<sup>rd</sup> District Court of Appeals for the State of Florida; and

**WHEREAS**, the City holds applications for 65 market rate BPAS allocations and 53 affordable BPAS allocations; and

**WHEREAS**, among the 118 applications for BPAS allocations, 53 have reached a point at which they could potentially request Administrative Relief BPAS allocations of which there are only 12; and

**WHEREAS**, recent estimates of remaining vacant parcels in Marathon, as provided in Exhibit B, indicate that there are approximately 700 vacant parcels within the City, 560 of which are estimated as buildable; and

**WHEREAS**, thirteen (13) RH zoned and 42 RM zoned vacant parcels are large enough to allow more than one residence per parcel; and

**WHEREAS**, the thirteen (13) RH zoned parcels are large enough to allow 70 residential units while the RM zoned parcels would allow up to 149 residential units; and

**WHEREAS**, based on the analysis above, the City will require 724 allocations; and

**WHEREAS**, assuming that we will require approximately fifty (50) percent more units for affordable workforce housing, then the City will require approximately 1,086 residential allocations, and

**WHEREAS**, the City is committed to continuing to work with the County and each of the

other municipalities to develop a positive future scenario for BPAS (ROGO); and

**WHEREAS**, such scenario should seek a minimum 30 year BPAS (ROGO) horizon and operate within any current and future Level Of Service (LOS) and environmental constraints; and

**WHEREAS**, he City has also indicated that future allocations should prioritize owner-occupied residences and workforce housing through strongly worded revisions to each of the Keys jurisdictions Comprehensive Plans; and

**WHEREAS**, the City Council has indicated that we must work on this scenario and a potential Legislative modification this year and during this Legislative Session,

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The Council urges the Legislature to collectively and collaboratively work with Monroe County and other municipalities this year and during this Legislative Session to develop a Legislative solution to the continuation of BPAS (ROGO) and the cessation of the “takings” dilemma.

**Section 2.** The City Council requests that language similar to or approximating the following language be utilized to amend Chapter 380.0552 (9):

**1. Amend 380.0552 (9)**

**(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](#)(10) 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~~ 26 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.

**2. Amend by adding 380.0552 (9) (a) 3. / 28-36.004 (3) F.A.C.**

3. Predicated upon a maximum hurricane evacuation time of 26 hours, to include all jurisdictions within the Florida Keys and Key West Areas of Critical State Concern:
- a. Residential allocations are hereby provided to these Areas of Critical State Concern based upon an assessment that this number approximates the number of vacant buildable residential lots remaining within the Florida Keys and the understanding that the development of this number of additional residential units will not cause the two Areas of Critical State Concern to exceed the calculated hurricane evacuation time.
  - b. Residential allocations provided herein shall be distributed among jurisdictions within the two Areas of Critical State concern based upon the relative number of vacant buildable residential lots within each jurisdiction; to be determined by the jurisdictions.
  - c. Within each participating jurisdiction, distribution of residential allocations provided herein shall be accomplished approximately evenly each year and shall occur over a thirty-year (30) horizon.
  - d. Any individual jurisdiction may borrow residential allocations forward from future years if those allocations will be utilized for affordable / workforce housing development which would be deed restricted as affordable / workforce housing for a minimum period of fifty (50) years.
  - e. The distribution of residential allocations by any jurisdiction shall be limited by any adopted Level Of Service (LOS) standard within that jurisdiction which would be compromised by the issuance of additional allocations.
  - f. Separate consideration shall be made for transportation LOS which may act across all jurisdictions.
  - g. The distribution of residential allocations within each jurisdiction shall adhere to all environmental priorities and limitations in adopted comprehensive plans relative to the distribution of residential allocations through respective Building Permit Allocation Systems or Rate Of Growth Ordinance.
  - h. Under this provision, buildable lots shall be considered those whose environmental designation is not characterized exclusively as wetlands (Submerged Lands, Mangroves, Saltmarsh and Buttonwood, Freshwater Wetlands). With the residential allocations provided herein, distribution by each jurisdiction shall be prioritized to buildable lots.
  - i. Distribution of residential allocations shall be prioritized to owner occupied residences and affordable / workforce housing project types.
  - j. Acquisition of environmentally sensitive workforce and affordable housing, and necessary infrastructure properties remain a priority for state and local land acquisition agencies regardless of the residential allocations which the 26.5 hour hurricane evacuation time may provide.
  - k. Authority is herein granted for local jurisdictions to adopt Ordinances to carry out the intent of this legislation.

**Section 3.** Directs the City Clerk to transmit a certified copy of this resolution to other Monroe County local government jurisdictions, the Governor, Senate President, House Speaker, and members of the Monroe County State Legislative Delegation.

**Section 4.** This resolution shall be effective upon adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 10TH DAY OF DECEMBER 2024.**

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**Lynn Landry, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY  
OF MARATHON, FLORIDA ONLY:**

\_\_\_\_\_  
Steve Williams, City Attorney

EXHIBIT “A”

DRAFT



EXHIBIT “B”

DRAFT

# Clearance Times Summary

Deliverable 5: Baseline Modeling		Phases	Florida Keys Including Key West		Florida Keys Excluding Key West	
			Mobile Homes in Phase 2 (hours)	Mobile Homes in Phase 1 (hours)	Mobile Homes in Phase 2 (hours)	Mobile Homes in Phase 1 (hours)
Baseline Modeling	Shows baseline - does not include additional prospective allocations	Phase 2	26.0	24.0	15.5	15.5
		Phase 1	15.5	15.5	15.0	15.0
Deliverable 6: Prospective Modeling for Future Allocations						
S1	3,550 Allocations	Phase 2	27.5	25.5	15.5	15.5
		Phase 1	15.5	15.5	15.0	15.0
S2	3,550 Allocations	Phase 2	28.0	26.0	15.5	15.5
		Phase 1	15.5	15.5	15.0	15.0
S3	3,550 Allocations	Phase 2	28.0	26.0	15.5	15.5
		Phase 1	15.5	15.5	15.0	15.0
S4	Minimal Allocations (11 allocations/yr)	Phase 2 (10 Years Growth)	26.5	24.0	15.5	15.5
		Phase 2B (20 Years Growth)	26.5	24.0	15.5	15.5
S5	One Unit/Vacant Lot	Phase 1	15.5	15.5	15.0	15.0
		Phase 2	31.0	28.5	17.0	16.5
S5	Distributes 7,954 units	Phase 1	15.5	15.5	15.0	15.0



# CITY OF MARATHON

## VACANT PARCELS

Monroe County Property Appraiser Office tax roll October 2024 data, PC codes vacant residential (0000).

Removed parcels with known projects, Condo association parcels, access easements, docks, conservation easement parcels, and nonzoned areas, and City of Marathon parcels.

Total Vacant Parcels ~ 700

Total Buildable Vacant Parcels

140 most likely unbuildable due to habitat including 6 red flag wetlands.

*(Source: Marathon habitat layer & KEYWEP).*

Zoning	All Vacant Parcels total
MU & MU-M	36
PR	1
RL-C	52
R-MH	41
RH	35
RL	31
RM	289
RM-1	17
RM-2	3
I-G & I-M	1
C-NA	65
C-OI	4
<b>Total</b>	<b>575</b>
<b>FL Forever list</b>	

LOTS PURCHASED OR DONATED SINCE JULY 2013: 15 parcels as of Jan2023

Credit: City of Marathon Planning Department, Oct 2024

H:\Planning\Vacant Lots\Vacant 2024  
See VACANT LAND Oct2024 Map Package