



**MONROE COUNTY**  
**THE FLORIDA KEYS AREA OF CRITICAL STATE CONCERN**  
**BUILD-OUT CHALLENGES FACING THE FLORIDA KEYS**

The Florida Keys are designated as an Area of Critical State Concern (ACSC) by the State Legislature. A Rate of Growth Ordinance (ROGO) was implemented in order to provide for the safety of residents in the event of a hurricane evacuation and to protect the significant natural resources of Monroe County (MC), as required by the State of Florida. ROGO established a competitive permit allocation system whereby those applications with the highest scores are awarded building permits.

In 2012, pursuant to Rule 28-20.140, F.A.C., the Department of Economic Opportunity (DEO) completed the hurricane evacuation clearance time modeling task and found that with 10 years' worth of building permits, the Florida Keys would be at a 24 hour evacuation clearance. Based upon the resulting 24 hour evacuation clearance, DEO determined the remaining allocations for the Florida Keys (3,550 additional permits countywide). In March 2013, the Governor and Cabinet, sitting as the State Administration Commission, approved the recommendation to allocate 10 years' worth of growth to the Florida Keys.

As demonstrated in Table 1, at current dedicated funding levels for land acquisition efforts in the Florida Keys, and the remaining 1,421 allocations for dwelling units through the year 2023, it would take approximately 423 years to generate the funds equal to the tax assessed value and offer to purchase the remaining inventory of private, vacant parcels in the Florida Keys (unincorporated and incorporated).

**Table 1: 2018 Inventory of Privately-Owned Vacant Parcels in Florida Keys and Approximate Land Value**

AREA	2018 NO. VACANT PARCELS	2018 AVERAGE PARCEL VALUE***	2018 APPROXIMATE LAND VALUE (December 2018 MC Property Appraiser data)	ESTIMATED FUNDING Based on Historic Rates For Acquisition of Conservation Lands	YEARS TO GENERATE THE FUNDS EQUAL TO THE TAX ASSESSED VALUE
Key West ACSC*	133	\$397,235	\$52,832,202	\$270,000*	196
Unincorporated MC	7,033	\$85,858	\$603,840,749	\$2,000,000	302 †
Marathon	1,349	\$100,481	\$135,548,863		68 †
Layton	24	\$123,928	\$2,974,267		1 †
Key Colony Beach	81	\$347,988	\$28,187,020		14 †
Islamorada	1,070	\$158,061	\$169,125,630		85 †
<b>TOTAL PARCELS</b>	<b>9,690</b>	<b>\$102,426</b>	<b>\$992,508,731</b>		
<b>TOTAL REMAINING ALLOCATIONS</b>	<b>1,421</b>	In 2012, the State authorized 3,550 County wide allocations, including cities, with 1,970 allocations for unincorporated MC.			
<b>PARCELS TO PURCHASE (COUNTYWIDE)</b>	<b>8,269**</b>	<b>\$102,426***</b>	<b>\$846,961,269</b>	<b>\$2,000,000</b>	<b>423**</b>

\* During the 5 year period of FY 2014-2018, 100% of the Monroe County Land Authority expenditures in the Key West ACSC were for affordable housing. Previously, the Monroe County Land Authority historically allocated approximately 18% (\$270,000/yr) of the Key West ACSC portion of tourist impact tax revenue to the purchase of conservation and recreation lands. \$270,000 is used for analysis of Key West.

\*\* The total vacant parcels (9,690) less the 1,421 allocations available results in 8,269 parcels to purchase. At an average cost of \$102,426 it will take 423 years to acquire these parcels utilizing \$2M.

\*\*\* This analysis assumes no growth in property value over time. Note property values could change exponentially.

† Land values for each jurisdiction are divided by the \$2M estimated funding figure.

**Note:** The analysis in this paper is limited to tax assessed value of parcels and does not consider: the future willingness of owners to sell; if the value assumed will be equal to the acquisition price; sufficiency of funds; if the parcels have a marketable title; the suitability of public ownership of certain parcels; the feasibility and costs of managing parcels; etc.

**Unincorporated Monroe County (MC):**

The State Administration Commission approved the recommendation to allocate 10 years’ worth of growth (1,970 permits) to MC while maintaining an evacuation clearance time of 24 hours, through the year 2023. The State of Florida specifically allows the issuance of 197 building permits per year for new residential development (Rule 28-20.140, F.A.C.), within unincorporated MC.

Table 2 demonstrates the challenges unincorporated MC may face, as there are 7,033 privately owned vacant parcels (minimum value of \$603,840,749). With just 197 permits per year, it would take over 35 years’ worth of annual allocations (at the current rate of 197) to absorb these parcels. This may result in a balance of 6,170 privately held vacant parcels at risk of not obtaining permits in the future (minimum value of \$529,745,119). This deficit of building permit allocations could trigger takings suits against both the State and MC, if no additional permits are allowed beyond the year 2023.

**Table 2:** 2018 Analysis of Privately-Owned, Vacant Parcels in **Unincorporated** Monroe County, Florida

<b>TIER</b>	<b>2018 NUMBER OF PRIVATE VACANT PARCELS</b>	<b>YEARS TO ALLOCATE PERMITS</b>
No Tier (ORCA, etc.)	223	
Tier I	3,520	
Tier II	292	
Tier III-A	187	
Tier III	2,811	
<b>TOTAL</b>	<b>7,033*</b>	<b>35.7</b>
<b>TOTAL REMAINING ALLOCATIONS</b>	<b>863</b>	
<b>POTENTIAL LIABILITY</b>	<b>6,170*</b>	

*\* Assumes one (1) unit per parcel and does not take into account additional density potential.*

**Current Land Acquisition Strategies:**

Monroe County and the State of Florida could face a significant number of property rights suits due to the large number of undeveloped privately owned parcels in unincorporated Monroe County’s portion of the Florida Keys Area of Critical State Concern, which far exceeds the number of new residential building permits allocations authorized by the State. In anticipation of this reality, the Monroe County Board of County Commissioners authorized staff to commence a land acquisition program to supplement the long standing efforts of the Monroe County Land authority and those of the State of Florida.

Since passage of the Stewardship Act, Monroe County and the Monroe County Land Authority and have budgeted over \$26M combined for land acquisition and spent/encumbered to date **\$18.9+M, retiring 251.01 development rights** (as of October 2020). This amount does not including purchases for affordable housing.

- *Density Reduction Lot acquisition program: Residential property owners sell parcels with development rights to the County. Density Reduction Lots may later be offered for sale with a deed restriction to prohibit the development of the property with new housing units. The revenue derived from the sale of these deed restricted properties can help replenish the funds necessary to retire more development rights.*
  - *The County and Land Authority have spent or encumbered \$8,448,484 on the density reduction program and conservation (inclusive of the County spending or encumbering \$1,407,722 on the density reduction program).*
- *Less Than Fee acquisition program: Residential property owners that own an adjacent vacant property may sell the development right to build a home on that vacant property to the County in exchange for legally allowed accessory uses on the adjacent parcel such as a pool, open yard or garage (and they retain ownership.) There are about 700 parcels in this category.*
  - *The County has spent or encumbered \$3,692,899 on the less than fee program.*

- The County works with DEP to identify ideal properties that would fit the Florida Forever mission, as well as eliminate potential takings liability. Since 2016, with the passage of the Stewardship Act, Florida DEP/DSL has spent/encumbered \$4.5+M, retiring 76.82 development rights (as of October 2020).
  - The State's long-standing acquisition efforts in the Florida Keys is essential to maintain to reduce future liability. DEP should aggressively pursue land acquisition in the Florida Keys because over 3,500 privately-owned vacant, undeveloped parcels lie within the Florida Forever project boundaries:

**Table 3: Analysis of Privately-Owned, Vacant Parcels Within Florida Forever Projects in the Florida Keys**

AREA	WITHIN THE FLORIDA FOREVER BOUNDARY			NOT WITHIN THE FLORIDA FOREVER			TOTAL COMBINED	
	NO. OF PARCELS	2018 AVERAGE PARCEL VALUE	2018 APPROX TOTAL LAND VALUE	NO. OF PARCELS	2018 AVERAGE PARCEL VALUE	2018 APPROX TOTAL LAND VALUE	NO. OF PARCELS	2018 APPROX TOTAL LAND VALUE
Key West	0	\$0	\$0	133	\$397,235	\$52,832,202	133	\$52,832,202
Unincorp MC	3,039	\$14,348	\$43,603,716	3,994	\$140,270	\$560,237,033	7,033	\$603,840,749
Marathon	414	\$10,948	\$4,532,519	935	\$140,124	\$131,016,344	1,349	\$135,548,863
Layton	4	\$98	\$392	20	\$148,694	\$2,973,875	24	\$2,974,267
Key Colony	0	\$0	\$0	81	\$347,988	\$28,187,020	81	\$28,187,020
Islamorada	77	\$202,710	\$15,608,696	993	\$154,599	\$153,516,934	1,070	\$169,125,630
	<b>3,534</b>	<b>\$18,038</b>	<b>\$63,745,323</b>	<b>6,156</b>	<b>\$150,871</b>	<b>\$928,763,408</b>	<b>9,690</b>	<b>\$992,508,731</b>
Allocations to be applied							<b>1,421</b>	
After allocations							<b>8,269</b>	<b>\$846,961,269</b>

At present, there are two recurring dedicated funding sources for purchasing land within the County. The first is through half of a 1 cent Tourist Impact tax (pursuant to § 125.0108, F.S.), which provides an annual revenue for the Florida Keys ACSC of approximately \$1.8million (5 year average of FY 14-18). This tax also generates approximately \$2.3 million annually for the Key West ACSC (5 year average of FY 14-18). The second recurring revenue is provided through a State Park surcharge that generates approximately \$470,000 annually (5 year average of FY 14-18). For the total revenue (on average \$2.27 million) in the Florida Keys ACSC, during the last 5-year timeframe, the Land Authority spent 89% (approximately \$2M) to the acquisition of conservation land, with the remainder going towards purchase of parcels for affordable housing, or occasionally for active recreation areas. These funding sources alone will not be sufficient to meet the land acquisition needs of MC in the future.

In recognition of the possibility that the inventory of vacant parcels exceeds the permits MC can award, the BOCC has already adopted some strategies to help transition land into public ownership to reduce the potential takings claims, and address the future build out of the Florida Keys by incentivizing development that eliminates privately owned vacant parcels and/or provides other development options. These strategies include:

### **ADOPTED COUNTY STRATEGIES**

- Incentivize Dedication of Land – County adopted an amendment to encourage additional land dedication by providing additional points in ROGO/NROGO.
- Discouragement Policy – County adopted an amendment to discourage private applications for FLUM amendments that increase density, as required by Rule 28-20.140, F.A.C., unless mitigated by providing land (acreage or Improved Subdivision [IS] parcels) to the County.
- Created Commercial FLUM category (no residential uses) - County adopted an amendment to provide options to re-designate property for other nonresidential uses (Provides alternative uses of property).

- Revised NROGO to make the process simpler and encourage nonresidential redevelopment and development. Created the NROGO banks of unutilized floor area to make NROGO easier to award additional square footage.
- Revised Lot Aggregation to encourage additional aggregation by increasing points awarded in ROGO.
- Revised Land Dedication in ROGO to provide additional points and options for dedicating land to the County.
- Revised transfer procedure for ROGO exemptions to provide the ability to transfer a market rate unit from one location to another with the provision of affordable housing.
- Adopted an Interim Development Ordinance limiting the transfer of market rate ROGO exemptions to single-family residential legally platted lots (dispersing development rights and not grouping multiple development rights on a single property).
- Revised Transfer of ROGO exemptions criteria for market rate units - to be developed as a single family detached market rate dwelling unit on a receiver site that is a platted lot, IS or URM zoning, and not a working waterfront.
- Revised Affordable Housing Incentive Program on the transfer of market rate ROGO exemptions to single-family platted lots, with IS or URM zoning, and not a working waterfront.
- Revised ROGO distribution to extend the remaining market rate ROGOs out for an additional three (3) years from 2023 to 2026 - provides additional time to implement other strategies, such as land acquisition.
- Adopted land acquisition priorities (Policy 102.4.2) to balance growth management, habitat protection, retirement of development rights, reduction of density & intensity, future build-out of the Florida Keys, climate change, sea level rise, affordable housing, etc.
- Continued partnership with Monroe County Land Authority to aggressively purchase lands and retire development rights.
- Established a Density Reduction Lot acquisition program. This is a voluntary program to retire development rights, with the County purchasing property from willing sellers. Density Reduction Lots may be offered for sale with a deed restriction to prohibit the development of the property with new housing units. The revenue derived from the sale of these deed restricted properties can help replenish the funds necessary to retire more development rights.  
*The County and Land Authority have spent or encumbered \$8,448,484 on the density reduction program and conservation (inclusive of the County spending or encumbering \$1,407,722 on the density reduction program).*
- Established a County Less than fee acquisition program. This is a voluntary program to retire building rights called the “Less than Fee” (LTF) program. For residential property owners that own an adjacent vacant property, the County will purchase the right to build a house on the vacant property. This willing seller program allow owners to retain ownership of their vacant property and use it for legally allowed accessory uses like a pool, open yard or garage in exchange for selling the right to build a home on that property.  
*The County has spent or encumbered \$3,692,899 on the less than fee program.*
- Continued partnership with Florida Department of Environmental Protection (DEP) to continue to acquire lands within the Florida Forever projects with cost share responsibilities (2016 MOA with DEP to acquire & retire development rights).  
*Since 2016, Florida DEP has spent/encumbered \$4.5+M, retiring 76.82 development rights.*

While these adopted strategies, if utilized, help reduce the potential takings claims (and some off-set the costs for direct acquisition of land), the projected costs outlined in Table 1 (page 1) suggest that these efforts will not serve to close the gap between the number of vacant parcels that may seek a permit and the number of permits the County is currently authorized by the State to issue, based on ROGO.

The County staff recognizes the need for ADDITIONAL STRATEGIES aimed at reducing the total inventory of privately owned vacant land. To that end, MC staff is currently evaluating the potential for future policy and program strategies that could apply within the Florida Keys, including:

## **ADDITIONAL POTENTIAL COUNTY POLICY STRATEGIES**

1. Accept the 300 workforce housing early evacuation unit building permit allocations pursuant to the Workforce-Affordable Housing Initiative authorized by the Florida Administration Commission and the Florida Department Economic Opportunity. The 300 units would be used in exchange for existing affordable allocations/exemptions with developers that agree to the early evacuation restriction and the affordable housing allocations returned to the County (returned in the exchange) will be set aside and banked for potential future takings cases.
2. Further allow the transfer of dwelling units (market rate, affordable and transient) so that property owners with more than one lawfully established unit can move the additional units to another location. The County could consider allowing transfers from:
  - a) between ROGO sub-areas; (Upper to Lower or Lower to Upper; BPK/NNK to BPK/NNK, Lower or Upper; BPK/NNK to BPK/NNK and Lower); and/or
  - b) between jurisdictions (MC and cities).
3. Re-designate and/or rezone land to commercial categories that do not allow residential use. The County could review existing mapping inconsistencies and consider re-designating certain lands, particularly along U.S.1, within a commercial category.
4. Seek federal legislation to prohibit subsidized flood insurance for new development on vacant land containing suitable/critical habitat for federally listed species within Monroe County.
5. Exercise the power of eminent domain and directly condemn parcels to avoid acquisition costs or payment of takings compensation.
6. Purchase the tax certificates and tax deeds on property with delinquent real estate taxes. Requires coordination with the Monroe County Property Appraiser's Office and the Monroe County Tax Collector.
7. Consider adopting a Contiguous Land Merger Ordinance, consistent with Murr v. Wisconsin. The ordinance would provide a process by which Monroe County may seek to merge two (2) or more contiguous parcels held in common ownership where one (1) or more of the contiguous parcels does not conform to standards for development due to environmental quality or environmental compatibility.
8. MC may create an Urban Service District (USD) to discourage and disallow development of land outside of the designated area (areas served by existing infrastructure including roadways, sewer, water and electric). MC may supplement this strategy to discourage residential development by amending ROGO regulations to either: (1) disallow development without utilities, or (2) give negative points.
9. MC may exercise eminent domain to acquire title to unimproved, platted rights-of-way (areas typically covered by right-of-way easements running in favor of the County) for the purpose of conservation and/or takings liability reduction. This would reduce the reasonable investment-backed expectations of development of adjacently-located platted, privately-owned undeveloped parcels currently without access to an improved right-of-way.

## **ADDITIONAL STATE & FEDERAL LAND ACQUISITION STRATEGIES**

10. Continue to request funding pursuant to Florida Keys Stewardship Bill and request the State of Florida Division of State Lands to maintain aggressively acquiring vacant, privately owned land as a State partner in the ACSC program. The County encourages and commits to working with DEP to identify ideal properties that would fit the Florida Forever mission, as well as eliminate potential takings liability.
11. Request the Federal Government to continue to aggressively acquire vacant, privately owned land. The County encourages the federal government to target the acquisition of lands containing suitable habitat for and known populations of federally-designated wildlife species (Endangered Species Act).
  - 12,926 parcels within the Federal Species Focus Area and Buffer Areas are owned by public and nonprofit agencies. 5,898 parcels within remain privately owned and vacant. The 5,898 privately owned vacant parcels have an approximate value of \$487,682,826.