



## CITY OF KEY WEST

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# Building Permit Allocation System 2013 Annual Report

### **INTRODUCTION:**

This annual report is written in accordance with Section 108-995 of the Building Permit Allocation System Ordinance (BPAS) (Ordinance 10-10). This section requires the Administrative Official charged with implementation and interpretation of the Land Development Regulations (the Planning Director) to provide an annual report to the Planning Board and City Commission describing the results of the Building Permit Allocation System tracking and monitoring analysis and making recommendations for any changes in the allocation by structure type or intended use.

On November 6, 2013, the City Commission adopted BPAS Ordinance 13-19. Appeal deadlines are expected to expire by March 2014. Therefore, this annual report will serve as the last report under Ordinance 10-10. Ordinance 13-19, requires that the City Planner provide an annual report to the Planning Board and the state land planning agency by September 1 of each year.

### **ANALYSIS RESULTS:**

The City's Building Permit Allocation System (BPAS), is a growth management mechanism developed and implemented in 1993 to ensure adequate evacuation time for residents and visitors in the event of a hurricane possibly affecting the City. The BPAS is also commonly referred to as the Rate of Growth Ordinance, or "ROGO", as the intent of the ordinance is to limit the amount and rate of new residential units approved in the City.

### **ESFU (Equivalent Single Family Unit) Input, Allocated and Surplus**

The 2008/2009 audit identified that BPAS inputs included the original 1,093 units identified in the 1993 Comprehensive Plan, and 370 additional units resulting from development agreements, a settlement agreement, and a consent final judgment. An additional 186 ESFU were placed into the system according to a Memorandum of Agreement between the Department of Community Affairs (DCA) and the City of Key West rectifying an accounting error for fractional units. Table 1, Total ESFU Inputs, identifies sources of units in the BPAS. In addition to the unit totals summarized in Table 1, the City identified units resulting from changes in land use (reductions in density and the number of units on parcels whenever unit allocations were informally or formally surrendered to the City) on various parcels from 1993 onward. These units, known as "recovered units" are included in the input total in this report. The total number of units accounted for in the BPAS is 1649 ESFU.

<b>Table 1 Total ESFU Inputs</b>	
Comprehensive Plan ESFU	1,093.00
Legal Mechanisms ESFU	370.00
DCA Agreement ESFU	186.00
<b>Total ESFU Input Units</b>	<b>1,649.00</b>

*Source: City of Key West Planning Department, 2009*

The 2008/2009 audit determined that the Planning Department allocated a total of 1,555.57 ESFU for the issuance of building permits; representing a surplus of 93.43 ESFU. Since that time, an additional 26.30 ESFU were allocated, making the total of allocations 1,581.87 ESFU; representing a surplus of 67.13 as demonstrated below in *Table 2, Total ESFU Allocated and Surplus*.

<b>Table 2 Total ESFU Allocated and Surplus</b>	
Total ESFU Input Units	1,649.00
ESFU Allocated 2008/2009 Audit	1,555.57
ESFU Allocated Post Audit	26.30
Total ESFU Allocated	1,581.87
<b>Initial Surplus</b>	<b>67.13</b>

*Source: City of Key West Planning Department, 2013*

### **Affordable Housing Allocations**

The 1993 Comprehensive Plan Policy 1-3.12.2 required “that 30% of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.3.” Referencing this specific directive policy language, the Planning Department calculated the actual number of dwelling units allocated in the BPAS, not ESFU, and subtracted transient unit allocations from the overall dwelling unit allocation total to calculate the 30% affordability requirement. The minimum number of affordable housing units has been allocated as required to date, as illustrated in *Table 3, Total Number of Affordable Housing Units Allocated in BPAS*.

<b>Table 3 Total Number of Affordable Housing Units Allocated in BPAS</b>	
Number of Units Allocated in BPAS	2078.10
Number of Transient Units Allocated	874.00
Balance After Transient Units are Subtracted from Number of Units Allocated (Resulting in Permanent Residential Unit Total)	1204.10
Subtract Unencumbered Units (Units Not Subject to Policy 1-3.12.2 due to Legal Agreements between the City, property owners, and the Department of Community Affairs)	96.00
Revised Balance	1108.10
Number of Affordable Housing Units Allocated	527.10
<b>Updated Percentage of Affordable, New Permanent Residential Units Allocated</b>	<b>48%</b>

Source: City of Key West Planning Department, 2013

### **Transient Unit Allocations**

The 1993 Comprehensive Plan stipulated that transient unit allocations not exceed a maximum of 25% of total ESFU available from the system's initiation. At the time of the 2008/2009 audit, a total of 506.92 transient ESFU were allocated, equaling 33% of all ESFU allocated. Per Ordinance 10-10, since transient allocations exceeded the 25% of the total ESFU, no further new transient allocations would be made under this system. However, due to additional non-transient allocations that have been granted since the 2008-2009 audit, the 33% overage has been reduced to 32%. See Table 4, Total Transient ESFU Allocated.

<b>Table 4 Total Transient ESFU Allocated</b>	
Total ESFU Allocated	1,581.87
Transient ESFU Allocated	506.92
<b>Percent Allocated</b>	<b>32%</b>

Source: City of Key West Planning Department, 2013

### **Beneficial Use Allocations**

The city shall reserve a minimum number of units for beneficial use claims. A determination of the minimum number of units shall be based upon available data illustrating parcels potentially subject to relief pursuant to section 108-998. Remaining units shall be allocated in accordance with the Comprehensive Plan and Land Development Regulations. Planning Department records indicate that 122 units are available for beneficial use claims. Please note that this number is subject to fluctuate as there may be additional units added to the BPAS Account as recovered/surrendered units, pending further extensive verification and documentation. Such analysis of verification and documentation is ongoing at this time.

<b>Table 5 Total ESFU Allocated through 2013</b>	
Total ESFU Input	1,649.00
Total ESFU Allocated	1,581.87
Total Expired Beneficial Use ESFU (Recovered)	16.55
Total ESFU (Surrendered)	38.32
<b>Revised Surplus: From Table 2 (67.13)</b>	<b>122.00</b>

*Source: City of Key West Planning Department, 2013*

### **Building Permit Allocation System Ordinance 13-19**

On November 6, 2013, the City approved BPAS Ordinance 13-19. The new Ordinance updated the existing Building Permit Allocation System regulations in response to the newly adopted Comprehensive Plan policies and the 2012 Hurricane Evacuation Model Memorandum of Understanding. The amendments establish an application process for the allocation of 91 new residential units to be received from the State Department of Economic Opportunity (DEO) annually for the next ten years as well as necessary changes that allow for clarification, simplification and ease of use for the residential development regulations process.

- 1. Lawful Unit Determination Process (LUD's)** – Under the new ordinance, the date a homeowner must prove his/her unrecognized residential unit was in existence has changed from 1990 to 2010. Under the new Ordinance, the Lawful Unit Determination application process will remain; however, the applicant must prove that the unit was constructed before April 1, 2010, the time that the most recent US Census population data update was published. This new date is possible as a result of the 2010-2012 Statewide Hurricane Evacuation Modeling process that used the 2010 US Census data to project

hurricane evacuation times for the Florida Keys (required to be 24 hours for permanent residents), and justify the allocation of additional residential units to the county. The US Census data is considered to be the most accurate population documentation available. Therefore, the Hurricane Evacuation Time Model counted all residential units existing in the city, whether recognized by the City's licensing division or not. The census number is higher than the number of units - both permanent and transient- listed in City records. By signing the Hurricane Evacuation Memorandum of Understanding, the State DEO and Emergency Management Division acknowledged these facts, which were further solidified by ratification of the Rule by the Florida Land and Water Adjudicatory Commission to allow new residential growth in the Florida Keys.

As a result of the unit recognition date change, the Planning Department expects to be able to legitimize the majority of existing unrecognized residential units throughout the city. The applicant will still be responsible for proving when the unit was constructed and paying back fees for utility and solid waste service as well as impact fees.

2. **Exclusion of Public/Government Facilities from the BPAS** – Similar to provisions in the Monroe County BPAS Ordinance, the new ordinance includes a clarification that public/government facilities and services are exempt from the BPAS, this includes but is not limited to temporary shelters or protective services where overnight stays are likely, but not permanent, such as fire stations and homeless shelters.
3. **Beneficial Use Criteria** – Regulations codify Comprehensive Plan Policy 1-1.16.1 requiring that the 85-100 remaining residential BPAS units (from the original 1993 allocation) are reserved for Beneficial Use purposes only. The City has reserved enough Beneficial Use allocations to cover any potential takings claims, leaving the new unit allocations available for new development.
4. **ESFU** – As a result of the Hurricane Evacuation Modeling update, new single-family unit equivalencies were recalculated based on the change in US Census findings of an increase in cars per residential unit throughout Monroe County. This change is derived by Comprehensive Plan Policy 1-1.16.3. Additionally, the Nursing Home use has been added to the table for clarification.

<b>Table 6 Revised ESFU</b>	
<b>Residential Structure Type</b>	<b>Equivalent Single-Family Unit Factor<sup>(1)</sup></b>
Single-family	1.00 <sup>(a)</sup>
Accessory apt./SRO	<del>0.55</del> 0.78 <sup>(b)</sup>
Multifamily	1.00 <sup>(c)</sup>
Transient unit	<del>0.58</del> 0.86 <sup>(d)</sup>
Nursing home, Rest Home, Assisted Living Facility and Convalescent Home	0.10 <sup>(e)</sup>

Source: City of Key West Ordinance 13-19

- (1) Pursuant to comprehensive plan policy 1-1.16.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 2010 U.S. Census for the respective residential structure types divided by the vehicles per single-family units (i.e., 1.28 vehicles per unit). The computations are as follows:
- (a) Single-family:  $1.28/1.28 = 1.00$
  - (b) Accessory unit, single room occupancy (SRO):  $1.00/1.28 = 0.78$
  - (c) Multifamily:  $1.28/1.28 = 1.00$
  - (d) Transient unit:  $1.10/1.28 = 0.86$  based on the Transportation Interface for Modeling Evacuations (TIME) Model for the Florida Keys (1.10 vehicles per transient unit in Monroe County).
  - (e) Nursing home, rest home, assisted living facility and convalescent home:  $1.0/10 = 0.10$  based on provisions set forth in Chapter 86-9. Definition of Terms.

- 5. Application Process** - Using the framework adopted in the 2013 Comprehensive Plan, staff created an application process that ensures that the limited number of residential unit allocations is distributed in a fair and equitable manner over time and that any future residential development contributes to the sustainable future of the City of Key West.

Allocations by Residential Unit Type – Based on requirements in the Comprehensive Plan the Ordinance requires that unit types be allocated as follows:

<b>Table 7 Allocations by Residential Unit Type</b>				
<b>Application/ Allocation Year</b>	<b>Affordable Housing Units (AH)*</b>	<b>Market Rate Units</b>	<b>Transient Rental Units</b>	<b>Total Units</b>
2013/2014	48 Units dedicated for Peary Court; 7 AH units available for allocation	36	0	91
2014/2015 2015/2016	55 annually; 110 over 2 years	36 annually; 72 over 2 years	0	91 annually; 182 over 2 yrs
2016/2017 2022/2023	45 annually; 315 over 7 years	36 annually; 252 over 7 years	10 annually; 70 over 7 years	91 annually; 637 over 7 yrs
<b>Over next 10 years</b>	<b>480</b>	<b>360</b>	<b>70</b>	<b>910</b>

Source: City of Key West Ordinance 13-19

\* This table does not consider the rate of available AH units if a Nursing Home use or SRO use were to apply that have a lower ESFU Value. Affordable housing units also include Work Force Housing.

- 6. Application Review and Ranking** – Every year the Building Permit Allocation application period will open to the public in July and will close by mid-September. Applications will be reviewed and ranked by City staff and the Final Determination of Award will be made by the Planning Board no later than April 1 of the award year. Based on the level of proposed development, development plan approvals will be reviewed by the relevant Boards and Commissions by May of each year. An application approval and allocation schedule will be published in June of each year with the specific deadlines and dates anticipated for final allocation approvals.

Since the appeal deadlines for Ordinance 13-19 have not expired, new residential units received in July 2013 will be combined with the 2014 anticipated units and thus follow the 2014 allocation schedule (see Attachment B).

**CONCLUSION:**

The Planning Department estimates that a total of 122.00 ESFU remain unallocated. It is estimated that there are approximately 80 lots of record potentially eligible for Beneficial Use consideration (based on on-going research performed by the Planning Department). While the demand for affordable housing may fluctuate, the recorded lots of record potentially eligible for beneficial use are very likely to remain, at minimum, the identified number (unless the Planning Department is able to determine some other buildback right that may be established on the property). As earlier demonstrated, the City has met and exceeded its affordability goals for the planning horizon established by the 1993 Comprehensive Plan. The remaining 122.00 ESFU will be reserved as a contingency for potential beneficial use claims that were unanticipated by the City.

**RECOMMENDATION:**

The City Commission and Planning Board should direct Planning Department staff and the Licensing Official to pursue all avenues available to identify additional ESFU units through unit donation, surrender and/or recovered. The purpose of this directive would be to increase the beneficial use reservation thus allowing further transfer of ESFU units from the beneficial use reservation towards potential beneficial use claims that may be unaccounted for.

It is important to note that the information presented in this report is not static; as units are recovered to the City, allocated, or as buildback entitlements are identified, these numbers can fluctuate. The information in this document is a representation of the information available at the time of report preparation.

Attachments: A: BPAS Outputs Tracking Spreadsheet  
B: BPAS Application Schedule 2013-2014  
C: Ordinance 10-10  
D: Ordinance 13-19