PLANNING BOARD
RESOLUTION NO. 2012-03

A RESOLUTION OF THE KEY WEST PLANNING BOARD ACCEPTING THE BUILDING PERMIT ALLOCATION SYSTEM (BPAS) ANNUAL REPORT AND PRESENTATION OF THE TRACKING AND MONITORING REQUIREMENTS AND RECOMMENDED CHANGES TO THE BUILDING PERMIT ALLOCATION SYSTEM (BPAS), AS REQUIRED BY SECTION 108-995 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA.

WHEREAS, Section 108-995 of the Land Development Regulations requires that the City's Administrative Official provide an annual report to the Planning Board and City Commission detailing the results of tracking and monitoring requirements and recommendations for any changes in the allocation by structure type or intended use of the City's Building Permit Allocation System; and

WHEREAS, the 2010-2011 Annual Report provides recommendations based on the implementation of the Building Permit Allocation System; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

_____ Chairman

_____ Planning Director

Section 2. That the City of Key West Planning Board accepts the presentation of the tracking and monitoring requirements and recommended changes to the Building Permit Allocation System (BPAS), as required by Section 108-995 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting held this 19th day of January, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director.

2/2/2012

Richard Klitenick, Chairman — Date
Key West Planning Board

Attest:

2.1.12

Donald Leland Craig, AICP — Date
Planning Director

Filed with the Clerk:

Cheryl Smith — 2-2-12

Cheryl Smith, City Clerk — Date

_____ Chairman

_____ Planning Director

CITY OF KEY WEST
Building Permit Allocation System 2010-2011 Annual Report

Introduction:

This annual report is written in accordance with Section 108-995 of the amended 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.

Analysis Results:

Between September 2008 and February 2009, the City of Key West Planning Department performed an audit analysis of the City's Building Permit Allocation System (BPAS), the 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 known as the Rate of Growth Ordinance, or "ROGO", because of the intent of the ordinance to limit the amount and rate of new residential units approved in the City. The purpose of the audit was to determine the total number of equivalent single family units[1] (ESFU) allocated to the BPAS system as well as the number allocated from the system for the construction of units, with an emphasis on the number of affordable housing ESFU allocated and the number of transient ESFU allocated (based on Comprehensive Plan requirements governing these two types of

[1] ESFU (Equivalent Single Family Unit): One Single family or multifamily (non-transient) home is rated as one "ESFU" as a measure for residential growth regulation. The ESFU factor also accounts for fractional units; 0.58 for a transient residential unit and 0.55 for an accessory apartment (both 600 s.f. or less).

allocations). Further, an assessment of any remaining un-allocated ESFU within the system was conducted.

BPAS inputs included the original 1,093 units identified in the 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 not included in the input total in this audit and are the subject of further analysis. The total number of units accounted for in the BPAS is 1649 ESFU.

Table 1 - Total ESFU Account	
Comprehensive Plan ESFU	1,093.00
Legal Mechanisms ESFU	370.00
DCA Agreement ESFU	186.00
Total ESFU Units	**1,649.00**

Source: City of Key West Planning Department, 2009

According to the 2008/2009 audit, the Planning Department determined that a total of 1,555.57 ESFU had been allocated for the issuance of building permits; representing a surplus of 93.43 ESFU as demonstrated below in *Table 2, Total ESFU Allocated.*

Table 2 - Total ESFU Allocated and Surplus	
Total ESFU Units	1,649.00
Total ESFU Allocated	1,555.57
Difference (Units)	**93.43**

Source: City of Key West Planning Department, 2009

QC
RWK

The Comprehensive Plan stipulates that a minimum of 30% of permanent residential units allocated in the BPAS be affordable, according to this standard contained in the plan. At the time the audit was performed, the Planning Department applied the 30% affordability requirement based to the total number of ESFU allocated. Using that methodology, the City had only met 26% of the 30% affordable housing obligation (a total of 398.45 of 1,555.57 ESFU were allocated as affordable units, representing 26% of all ESFU as being allocated affordable-see *Table 3, Total Affordable ESFU Allocated*). At the time of the audit, it was determined that the City of Key West had not met the requirement of allocating 30% of all ESFU as affordable units. However, this methodology was reevaluated, and the 2011 findings will be discussed further in detail in Table 8.

Table 3 – Total Affordable ESFU Allocated to 2008	
Total ESFU Allocated	1,555.57
Affordable ESFU Allocation	398.45
Percent Allocated	**26%**

Source: City of Key West Planning Department, 2009

The Comprehensive Plan also stipulates 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. See *Table 4, Total Transient ESFU Allocated.* As indicated below, the City of Key West had exceeded allowable transient allocations by 8% at the time the 2009 Audit was performed.

Table 4 – Total Transient ESFU Allocated	
Total ESFU Allocated	1,555.57
Transient ESFU Allocated	506.92
Percent Allocated	**33%**

Source: City of Key West Planning Department, 2009

DC
RMK

Based upon the information derived from the audit in 2009, the City approved changes to the BPAS ordinance, specifically in reference to prioritization of further unit allocations. Section 108-995 of Ordinance 10-10 allows the City Commission to annually evaluate allocations by structure type and make adjustments to accommodate the shifts in supply and demand factors, except that the ordinance specifies that the allocations for affordable housing shall not constitute less than 30% of the total ESFU available for allocation since 1990, nor shall the transient unit allocation exceed 25% of the ESFU available for allocation since 1990. Further, the City is obligated by Ordinance 10-10 to reserve an allocation of units for parcels potentially eligible for relief pursuant to Section 108-998 of the Land Development Regulations. This reservation of unit allocations is to satisfy legitimate claims by owners of lots of record that no reasonable use of their property remains, unless an allocation for the development of a dwelling unit is provided. If such reservations were not made available, the City could potentially face litigation in the form of inverse condemnation claims, known as "takings" lawsuits. The number of ESFU units available will change with the coming year as beneficial use applications are processed and allocations are issued to legitimate applicants. The number of available ESFU units may also increase if the owners of lots with multiple residential units redevelop and volunteer to surrender unused unit allocations to the City (which, from time to time, does occur).

Tables 5 and 6 indicate the current (October 2011) status of the BPAS system.

Table 5 - Total ESFU Account	
Comprehensive Plan ESFU	1,093.00
Legal Mechanisms ESFU	370.00
DCA Agreement ESFU	186.00
Total ESFU Units	**1,649.00**

Source: City of Key West Planning Department, 2011

9c

RWK

As indicated in Table 5, no changes to the total ESFU account occurred between February 2009 and October 2011, meaning that no new units came into the BPAS. There may be additional units added to the BPAS Account as recovered units, pending further extensive verification and documentation. Such analysis of verification and documentation is ongoing at this time.

Table 6 – Total ESFU Allocated through 2011	
Total ESFU Input	1,649.00
Total ESFU Allocated	1565.32
Total Expired Beneficial Use ESFU (Recovered)	16.55
Revised Surplus: From Table 2 (93.43)	100.23

Source: City of Key West Planning Department, 2011

As indicated in Table 6, allocated units increased by 8.75 ESFU.

Table 7 – Total Affordable ESFU Allocated through 2011	
Total ESFU Allocated	1565.32
Affordable ESFU Allocation	412.3
Percent Allocated	**26%**

Source: City of Key West Planning Department, 2011

As indicated in Table 7, 13.85 ESFU have been allocated towards affordable housing since 2009. However, further evaluation of Comprehensive Plan Policy 1-3.12.2 was performed by the Planning Department in March 2011 with regard to this aspect of the Audit. This policy requires "that 30% of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.3." When the 2009 BPAS Audit was performed, the total number of units (actual dwelling places) was identified,

and the ESFU tabulations completed, with percentages being taken from the ESFU. Using that methodology, the City had only met 26% of the 30% affordable housing obligation. However, as previously referenced, Comprehensive Plan Policy 1-3.12.2 requires "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, it is the Planning Department's position that two things must be changed with respect to how this number is calculated. First, the actual number of dwelling units allocated in the BPAS, not ESFU, must be utilized to calculate the 30% affordability requirement. Secondly, transient unit allocations must be subtracted from the overall dwelling unit allocation total, because Policy 3-1.1.2 only requires that 30% of all new **permanent residential** units allocated be affordable. By applying this methodology, the Department must take the position that Policy 1-3.12.2 has been met thus far, and that the minimum number of affordable housing units has been allocated as required to date, as illustrated below.

This space left intentionally blank

Table 8 – Total Number of Affordable Housing Units Allocated in BPAS	
Number of Units Allocated in BPAS	2061.10
Number of Transient Units Allocated	874.0
Balance After Transient Units are Subtracted from Number of Units Allocated (Resulting in Permanent Residential Unit Total)	1187.1
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
Revised Balance	1091.1
Number of Affordable Housing Units Allocated	504
Updated Percentage of Affordable, New Permanent Residential Units Allocated	**46%**

Totals as of October 2011

Table 9 – Total Transient ESFU Allocated through 2011	
Total ESFU Allocated	1565.32
Transient ESFU Allocated	506.92
Percent Allocated	**32%**

Source: City of Key West Planning Department, 2011

9C
RMK

As indicated in Table 9, no changes to transient unit allocations have occurred since the performance of the BPAS audit in 2009. However, due to additional non-transient allocations that have been granted since the 2008-2009 audit, the 33% overage has been reduced to 32%.

Conclusions and Recommendations:

The Planning Department estimates that a total of 100.23 ESFU remain unallocated. It is estimated that there are approximately 86 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. Therefore, recognition of the City's potential obligation towards the owners of these lots must always be recognized. The remaining 14.23 ESFU should be reserved as a contingency for potential beneficial use claims that were unanticipated by the City.

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.

Recommendations:

The City Commission and Planning Board should direct Planning Department staff to pursue all avenues available to identify additional ESFU units through unit donation or surrender, and identification of units existent on lots in 1990-1993, but removed by acts of God, or voluntarily. The purpose of this directive would be to identify units that may have existed around the implementation of the BPAS, but may now be considered

candidates for beneficial use claims; thus allowing transfer of ESFU units from the beneficial use reservation towards potential beneficial use claims that may be unaccounted for.

Separately, upon preparing this report, the Planning Department recognized a discrepancy between Section 108-995 of Ordinance 10-10 and Policy 1-3.12.2 of the Comprehensive Plan in that the Comprehensive Plan requires that "that 30% of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.3." Ordinance 10-10 provides that the City Commission may annually evaluate allocations by structure type and make adjustments to accommodate the shifts in supply and demand factors, except that the allocations for affordable housing shall not constitute less than 30% of the total ESFU available for allocation since 1990." The Department recommends that this language in Ordinance 10-10 be revised for consistency with the Comprehensive Plan, to remove the reference to "ESFU" and replace it with a reference to "permanent residential units."

Attachment A: Ordinance 10-10
Attachment B: Draft BPAS Outputs Tracking Spreadsheet
Attachment C: 2009 Audit Report