

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/CS/SB 1326

INTRODUCER: Appropriations Committee on Agriculture, Environment, and General Government;
Environment and Natural Resources Committee and Senator Rodriguez

SUBJECT: Areas of Critical State Concern

DATE: April 14, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	Fav/CS
2.	Reagan	Betta	AEG	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1326 exempts from payment or performance bond requirements, a person entering into a construction contract for work done on property in an area of critical state concern that is subject to a long-term ground lease with Habitat for Humanity International, Inc. or its affiliates, provided that the leasehold interest is subject to any claims by claimants who qualify as lienors.

The bill extends funding from the Florida Forever Trust Fund for land acquisition within the Florida Keys Area of Critical State Concern to fiscal year 2035-2036. The funding is set to end in fiscal year 2026-2027.

The bill requires local government comprehensive plans to maintain a hurricane evacuation clearance time for permanent residents of no more than 24.5 hours or 825 permit allocations, whichever is less. The bill divides the 825 permit allocations among Monroe County, the Village of Islamorada, the City of Marathon, and the City of Key West.

The bill has no impact on state revenues or expenditures. See Section V., Fiscal Impact Statement.

The bill has an effective date of July 1, 2025.

II. Present Situation:

Areas of Critical State Concern (ACSC)

The Administration Commission¹ may designate an ACSC for the following areas:

- An area that contains or has a significant impact on environmental or natural resources of regional or statewide importance, where uncontrolled private or public development would cause substantial deterioration of the area's resources.² This includes 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.³
- An area that contains or has a significant impact on historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, where private or public development would cause substantial deterioration or complete loss of the area's resources, sites, or districts.⁴
- An area that has a significant impact on, or is significantly affected by, an existing or proposed major public facility or other area of major public investment, including highways, ports, airports, energy facilities, and water management projects.⁵

The Florida Department of Commerce, which is the state land planning agency,⁶ may recommend an area for designation as an area of critical state concern. In its recommendations, the department must include:

- Recommendations for the purchase of land within the boundaries of the proposed area as environmentally endangered lands and outdoor recreation lands under the Land Conservation Program;
- Any report or recommendation of a resource planning and management committee;⁷
- The dangers that would result from uncontrolled or inadequate development of the area and the advantages of developing the area in a coordinated manner;
- A detailed boundary description of the proposed area;
- Specific principles for guiding development within the area;⁸
- An inventory of lands owned by the federal, state, and local governments within the proposed area; and
- A list of the state agencies with programs that affect the purpose of the designation.⁹

¹ The Administration Commission consists of the Governor and the Cabinet. The commission acts on simple majority. Section 380.031(1), F.S.

² Section 380.05(2)(a), F.S.

³ *Id.*

⁴ Section 380.05(2)(b), F.S.

⁵ Section 380.05(2)(c), F.S.

⁶ Section 380.031(18), F.S.

⁷ Prior to recommending the designation of an area of critical state concern, the Governor, acting as chief planning officer of the state, must appoint a resource planning and management committee for the area under study by the Florida Department of Commerce (DOC). The committee must organize a voluntary, cooperative resource planning and management program to resolve any problems that might endanger the area's resources and facilities. Section 380.045(1), F.S.

⁸ Regarding the principles for guiding development, DOC must recommend actions which state and regional agencies and local governments must accomplish to implement these principles. These actions may include, but are not limited to, revisions of the local comprehensive plan and adoption of land development regulations, density requirements, and special permitting requirements. Section 380.05(1)(a), F.S.

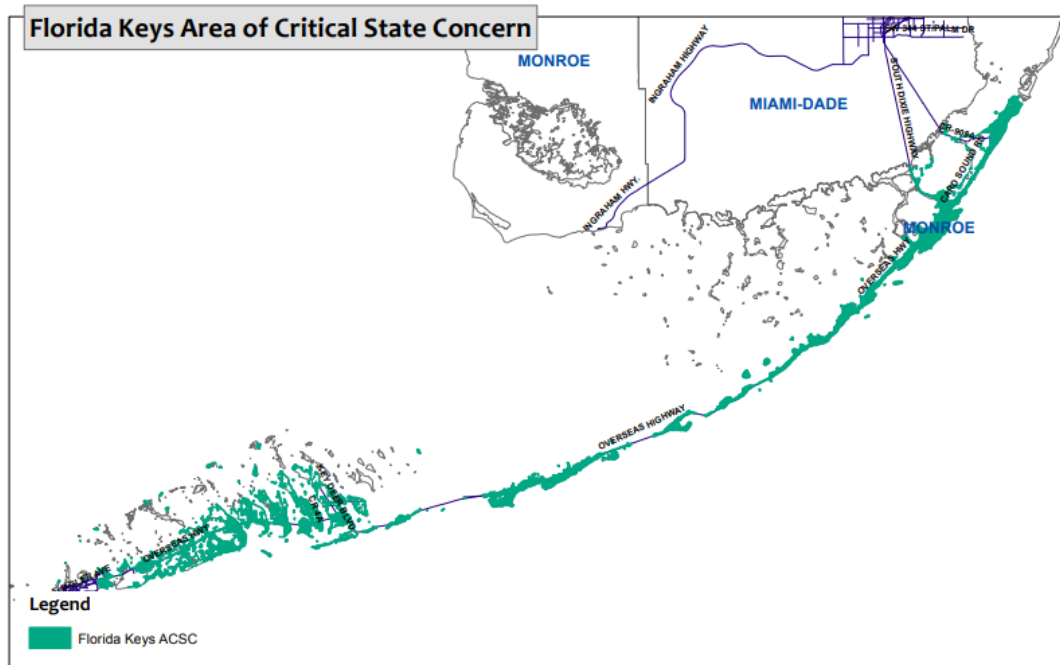
⁹ Section 380.05(1)(a), F.S.

Following the designation of the ACSC, any local government that is wholly or partially located within the area must conform its previously adopted comprehensive plan to the principles for guiding development of the area of critical state concern.¹⁰

There are currently six ACSC designated in Florida: The Big Cypress ACSC, the Green Swamp ACSC, the Florida Keys ACSC, the City of Key West ACSC, the Brevard Barrier Island ACSC, and the Apalachicola Bay ACSC.¹¹

Florida Keys ACSC

The Florida Keys ACSC was designated in 1975 and currently includes the municipalities of Islamorada, Marathon, Layton, and Key Colony Beach, as well as unincorporated Monroe County.¹²



State, regional, and local governments in the Florida Keys ACSC are required to coordinate their development plans and conduct program and regulatory activities to be consistent with the principles for guiding development. The principles for guiding development plan for growth and

¹⁰ Section 380.05(14), F.S.

¹¹ DOC, *Areas of Critical State Concern Program*, <https://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern> (last visited March 17, 2025); see sections 380.055, 380.0551, 380.0552, 380.0553, and 380.0555, F.S.

¹² DOC, *Florida Keys Area of Critical State Concern Annual Report*, page 3 of Tab 1 (2023), available at https://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/2023keysacscannualreport.pdf?sfvrsn=cd0721b0_1. In 1984, the City of Key West was removed from the Florida Keys Area of Critical State Concern and was designated a separate area of critical state concern. *Id.* For the map on this page, see Florida Department of Economic Opportunity, *Florida Keys Area of Critical State Concern*, 1 (2015), available at https://www.floridajobs.org/docs/default-source/2015-community-development/community-planning/2015-cmty-plan-acsc/floridakeysmap.pdf?sfvrsn=c93565b0_2.

modernization and protect the environmental resources, historical heritage, and water quality of the Florida Keys to maintain its status as a unique natural environment.¹³

A land development regulation or element of a local comprehensive plan in the Florida Keys ACSC may be enacted, amended, or rescinded by a local government, but such actions must be approved by the Florida Department of Commerce.¹⁴ Amendments to local comprehensive plans must be reviewed for compliance with the principles for guiding development. They must also be reviewed for compliance with 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.¹⁵

For the purposes of the hurricane evacuation clearance time, mobile home residents are not considered permanent residents.¹⁶ Additionally, the City of Key West ACSC must be included in the hurricane evacuation study and must be subject to the hurricane evacuation clearance time.¹⁷

Hurricane Evacuation Clearance Standards in the Florida Keys

The Florida Keys Area Protection Act¹⁸ requires, in part, that local government comprehensive plan amendments within the Florida Keys ACSC, which includes most of Monroe County, must comply with goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a 24-hour hurricane evacuation clearance time for permanent residents.¹⁹ The evacuation clearance time must be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the Department of Commerce.²⁰

In 2012, a hurricane evacuation study was conducted to model the 24-hour clearance time required by statute and to implement a 10-year planning horizon (2013-2023) for managed growth.²¹ The study was completed as part of the Memorandum of Understanding (MOU) entered into by the Department of Commerce, the Florida Division of Emergency Management, and local governments in the Florida Keys.²² Modeling for the 2012 study assumed a two-phase

¹³ Section 380.0552(7), F.S. For a full list of required considerations, *see* section 380.0552(7)(a)-(n), F.S.

¹⁴ Section 380.0552(9)(a), F.S.

¹⁵ Section 380.0552(9)(a)1. and 2., F.S. Additionally, amendments to comprehensive plans must be reviewed for compliance with 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 criteria for wastewater treatment and disposal facilities or onsite sewage treatment and disposal systems.

¹⁶ Section 380.0552(9)(a)2.a., F.S.

¹⁷ Section 380.0552(9)(a)2.b., F.S.

¹⁸ Section 380.0552, F.S.

¹⁹ Section 380.0552(9)(a)2., F.S.

²⁰ *Id.*

²¹ DOC, *Florida Keys Hurricane Evacuation Modeling Report*, 2, 7 (Dec. 2023), available at https://www.floridajobs.org/docs/default-source/community-planning-development-and-services/evacuation-modeling-report-final-with-appendices79bb3ca4cbbb61cbb02aff01004f56df.pdf?sfvrsn=47005db0_10.

²² *See* Monroe County Board of Commissioners, *Monroe County, Florida Monroe County Board of County Commissioners Resolution No. 226-2012*, (2012), available at <https://www.monroecountyem.com/DocumentCenter/View/8431/Florida-keys-Hurricane-Evacuation-MOU?bidId=> (which contains the text of the Hurricane Evacuation Clearance Time MOU, beginning on page 6 of the document); DOC, *Florida Keys Hurricane Evacuation Modeling Report* at 7. DOC used the Transportation Interface for Modeling Evacuations or TIME Model to ensure that the evacuation clearance time could be met. The TIME

evacuation and included both the Florida Keys and the City of Key West ACSC in the evacuating population. Phase I of the evacuation occurs 24-48 hours in advance of tropical storm winds and includes the evacuation of tourists, mobile homeowners, students living in dorms, and other non-permanent residents.²³ Phase II occurs 0-24 hours in advance of tropical storm force winds and includes the evacuation of all site-built permanent residents.²⁴

The MOU established a maximum issuance of 3,550 building permits over a 10-year period to distribute to local governments in the Florida Keys.²⁵ Following the 2012 study, the 3,550 building permits were allocated as follows:

- 280 to the Village of Islamorada;
- 60 to the City of Key Colony Beach, which subsequently withdrew from the MOU and does not have a building permit allocation;
- 910 to the City of Key West;
- 30 to the City of Layton;
- 300 to the City of Marathon; and
- 1,970 to unincorporated Monroe County.²⁶

The hurricane evacuation study was updated in 2023.²⁷ The 2023 evacuation models also assumed a two-phase evacuation. Additional modeling scenarios were run to account for the Third District Court of Appeals' decision in *Mattino v. City of Marathon* in 2022, which held that mobile home residents were permanent residents for the purpose of the 24-hour evacuation clearance time and that the City of Key West ACSC was not subject to the evacuation clearance time.²⁸

Model takes into account the number of housing units, subtracts the vacant housing units, and multiplies that sum by the participation rate, the number of vehicles available per housing unit, and by the vehicle use rate. The number of evacuating vehicles is the final product and the model then loads that number on the road using a traffic assignment algorithm to produce the evacuation clearance time. *Id.*

²³ *Id.*

²⁴ *Id.* at 8.

²⁵ *Id.* 7. Evacuation scenarios were completed based on variables including tourist units (Phase I only); 1,300 workforce affordable, early-evacuation units (Phase I only); mobile home units; site-built units (Phase II only); participation rates; a response curve of 12 hours; vehicle use by unit type; vehicle use by special populations; evacuation stream; and roadway capacity. *Id.* at 10.

²⁶ *Id.* at 8.

²⁷ *Id.* at 9.

²⁸ *Id.* at 10; see *Mattino v. City of Marathon*, 345 So. 3d 939 (3d DCA 2022), in which the Third DCA overturned in part a final order of the Florida Department of Economic Opportunity (DEO), which determined that the comprehensive plan amendments adopted by the Cities of Key West, Marathon, and Islamorada did not violate the 24-hour evacuation clearance time for permanent residents. In 2017, DEO determined that comprehensive plan amendments were needed to allow for 1,300 new building permits for affordable workforce housing for residents of the Florida Keys. The comprehensive plan amendments sought to add the permanent residents of those 1,300 new housing units to Phase I evacuees, meaning they could be evacuated over a 48-hour period, instead of a 24-hour period. In response, the appellants filed a petition for a formal administrative hearing, claiming that the comprehensive plan amendments violated the 24-hour evacuation clearance time for permanent residents. DEO adopted the administrative law judge's recommended order and issued its final order. The Third DCA found that the comprehensive plan amendments for the Cities of Marathon and Islamorada did violate the 24-hour evacuation clearance time, however the City of Key West's comprehensive plan amendments did not. Regarding the City of Key West, the court held that the 24-hour evacuation clearance time did not apply because the City of Key West was designated as a separate area of critical concern.

Following the holding in *Mattino*, in 2024, the Florida Legislature amended the Florida Keys ACSC statute to provide that mobile home residents are not considered permanent residents for the purposes of the evacuation clearance time.²⁹ This would allow mobile home residents to be evacuated during both Phase I and Phase II. Additionally, the Legislature required the Key West ACSC to be included in hurricane evacuation modeling.³⁰

Construction Liens

Generally, any person who provides services, labor, or materials for improving, repairing, or maintaining real property may place a construction lien³¹ on the property, provided the person complies with statutory procedures.³² A lienor is a contractor; subcontractor; sub-subcontractor, laborer, or materialman who furnishes materials under contract; or a professional lienor.³³

A construction lien extends to the right, title, and interest of the person who contracts for the improvement to the extent that such right, title, and interest exists at the improvement's commencement or is acquired in the real property.³⁴ However, when a lessee makes an improvement under an agreement between the lessee and his or her lessor, the lien also extends to the lessor's interest unless:³⁵

- The lease, or a short form or a memorandum of the lease, is recorded in the official records of the county where the property is located before the recording of a notice of commencement for improvements to the property and the lease's terms expressly prohibit such liability; or
- The lease's terms expressly prohibit such liability, and a notice advising that leases for the rental of premises on a property prohibit such liability has been recorded in the official records of the county in which the property is located before the recording of a notice of commencement for improvements to the premises and the notice includes specified information.³⁶

If a lease expressly provides that the lessor's interest will not be subject to the construction liens relating to improvements made by the lessee, the lessee must notify the contractor making any such improvements of the lease provision, and the knowing and willful failure of the lessee to provide such notice renders the contract voidable at the contractor's option.³⁷

Payment and Performance Bonds

A contractor who contracts with the state or any local government or other public authority or private entity for the construction of, or repairs to, a public building or public work must execute

²⁹ Chapter 2024-219, Laws of Fla.

³⁰ *Id.*

³¹ A lien is a claim against property that evidences a debt, obligation, or duty. *See* 34 FLA. JUR. 2D, *Liens* s. 1 (describing a lien as a charge on property for the payment or discharge of a debt or duty which may be created only by a contract of the parties or by operation of law).

³² Chapter 713, F.S.

³³ Section 713.01(19), (21), F.S.

³⁴ Section 713.10(1), F.S.

³⁵ *Id.*

³⁶ Section 713.10(2)(b), F.S.

³⁷ Section 713.10(2)(a), F.S.

and record³⁸ a payment and performance bond with a surety insurer authorized to do business in Florida as a surety.³⁹ A payment bond is a type of surety that generally guarantees that all subcontractors, laborers, and material suppliers will be promptly paid for their labor, services, and materials contributed to a construction project.⁴⁰

The bond forms a three-part contract between the owner, the contractor, and the surety to ensure that liens are not filed on the property, serving as the security for payment in lieu of the typical right to claim a lien.⁴¹ The payment bond must be furnished in at least the amount of the original contract price before beginning the construction project, and a copy of the bond must be attached to the recorded notice of commencement.⁴²

Florida Forever Trust Fund

The Florida Forever Program is the state's main conservation and recreation lands acquisition program.⁴³ It serves as a blueprint for conserving Florida's natural and cultural heritage.⁴⁴ Thirty five percent of Florida Forever funds must be distributed to the Florida Department of Environmental Protection for the acquisition of lands and capital project expenditures described in the Florida Forever Act. Of this distribution:

- Increased priority must be given to acquisition that would achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge.
- Between three and ten percent must be spent on capital project expenditures that meet land management planning activities necessary for public access.
- Beginning in fiscal year 2017-2018 and continuing through fiscal year 2026-2027, at least \$5 million must be spent on land acquisition within the Florida Keys Area of Critical State Concern. This requirement is extended by the bill.

III. Effect of Proposed Changes:

Section 1 amends s. 255.05, F.S., to exempt, at the discretion of the official or board who owns the subject underlying property in fee simple, a person entering into a construction contract providing for services or material from being required to execute a payment and performance bond:

- When the work is done on property located within an area of critical state concern subject to a long-term ground lease of 99 years or more with Habitat for Humanity International, Inc., or any of its affiliates, and
- Provided that such leasehold interest created by the ground lease is subject to any claims by claimants who qualify as lienors.

³⁸ The payment and performance bond must be executed and recorded before the work is begun, and the recording must be in the public records of the county where the improvement is located. Section 255.05(1), F.S.

³⁹ Section 255.05(1), F.S.

⁴⁰ See sections 255.05 and 713.23, F.S.

⁴¹ Section 713.23(1), F.S.

⁴² Section 713.23(1)(a), F.S.

⁴³ The Florida Department of Environmental Protection, *Florida Forever*, <https://floridadep.gov/lands/environmental-services/content/florida-forever> (last visited March 18, 2025).

⁴⁴ *Id.*

The underlying real property owned by the state or any county, city, or political subdivision thereof, or by any other public authority, may not be subject to any lien rights created under chapter 713, F.S., relating to liens, generally.

Section 2 amends s. 259.105, F.S., to extend the date through which at least \$5 million of the funds allocated from the Florida Forever Act to the Florida Department of Environmental Protection for the acquisition of lands and capital project expenditures must be spent on land acquisition within the Florida Keys Area of Critical State Concern (ACSC). The funding requirement currently extends through fiscal year 2026-2027 and the bill extends it through fiscal year 2035-2037.

Section 3 amends s. 380.0552, F.S., which establishes the Florida Keys ACSC. Current law requires the state land planning agency to review local comprehensive plans in the Florida Keys ACSC for compliance with certain requirements. The bill amends the requirement that local comprehensive plans maintain a hurricane evacuation clearance time for permanent residents of no more than 24 hours by extending it to no more than 24.5 hours or 825 permit allocations, whichever is less.

The bill adds that, to ensure the hurricane evacuation clearance time is met, Monroe County, the Village of Islamorada, the City of Marathon, the City of Layton, and the City of Key West shall each continue to maintain permit allocation systems limiting the number of permits issued for new residential dwelling units. The bill provides that the Administration Commission shall distribute 825 permit allocations over a period of at least 10 years, as follows:

- Monroe County must receive 539 permit allocations:
 - All of which must be issued to vacant, buildable parcels. Only one of the allocated building permits shall be awarded to any individual parcel.
 - Of the 539 permit allocations, 377 must be used for workforce housing.
- The City of Marathon must receive 187 permit allocations:
 - All of which must be issued to vacant, buildable parcels. Only one of the allocated building permits shall be awarded to any individual parcel.
 - Distribution of the permits must prioritize allocations for owner-occupied residences, affordable housing, and workforce housing.
- The City of Islamorada must receive 71 permit allocations:
 - All of which must be issued to vacant, buildable parcels. Only one of the allocated building permits shall be awarded to any individual parcel.
 - Distribution of the permits must prioritize allocations for owner-occupied residences, affordable housing, and workforce housing.
- The City of Key West must receive 28 permit allocations. The housing constructed pursuant to the allocated permits must be affordable.⁴⁵

⁴⁵ “Affordable” is defined section 420.0004(3), F.S., to mean that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households of extremely-low-income persons, low-income persons, moderate-income persons, or very-low-income persons.

The bill defines “workforce housing” as residential dwelling units restricted for a period of no less than 99 years to occupancy by households who derive at least 70 percent of their household income from gainful employment in Monroe County supplying goods or services to Monroe County residents or visitors.

Section 4 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes ad valorem tax relief for private owners of single- and multifamily housing units in some cases.

B. Private Sector Impact:

The bill may have an indeterminate positive impact by providing an exemption for Habitat for Humanity International, Inc., or any of its affiliates from payment and performance bonds in some cases. This may have an indeterminate positive impact on the Florida Keys by increasing affordable housing.

C. Government Sector Impact:

This bill has no net impact on state funds; however, the extension of funding from Florida Forever would, if funded, impact available funds for land acquisition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 196.1978, 255.05, 259.105, and 380.0552.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Agriculture, Environment, and General Government on April 8, 2025:

The committee substitute removes provisions amending s. 196.1978, F.S., to revise the conditions under which certain property may be considered property used for a charitable purpose. The amendment also modifies the building permit allocations to Monroe County to maintain a hurricane evacuation clearance time required by the bill.

CS by Environment and Natural Resources on March 25:

- Requires that local comprehensive plans maintain a hurricane evacuation clearance time for permanent residents of no more than 24.5 hours or 825 permit allocations, whichever is less.
- Requires the Administration Commission to distribute the permit allocations over a period of at least 10 years as follows:
 - 580 to Monroe County, with 406 issued only for workforce housing;
 - 201 to the City of Marathon;
 - 77 to the Village of Islamorada; and
 - 30 to the City of Key West.
- Requires permits issued to Monroe County, the City of Marathon, and the Village of Islamorada to be issued to vacant, buildable parcels, with only one permit awarded to any individual parcel.
- Provides that distribution of the permit allocations to the City of Marathon and the Village of Islamorada must prioritize owner-occupied residences, affordable housing, and workforce housing.

B. Amendments:

None.