

CITY COUNCIL AGENDA STATEMENT



Meeting Date: July 13, 2021

To: Honorable Mayor & Council Members

From: Brian Shea, Planning Director

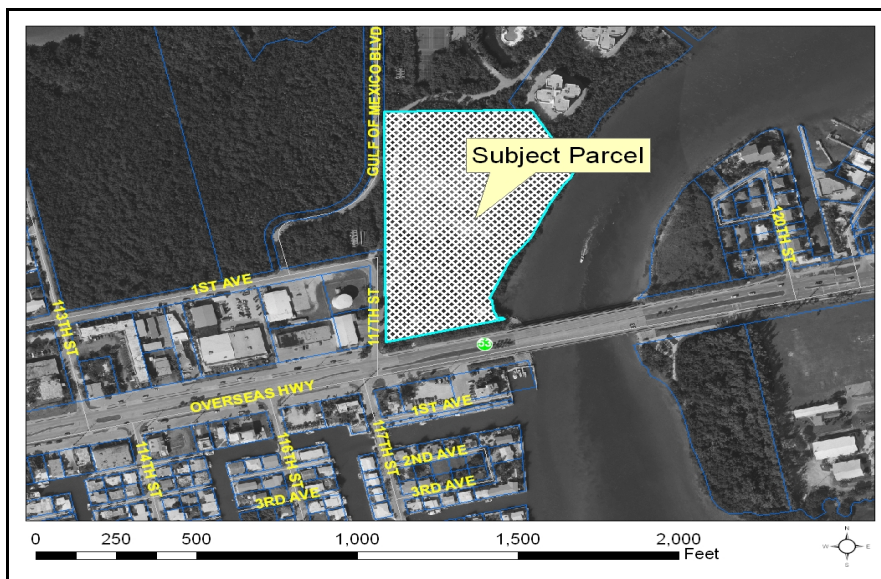
Through: George Garrett, City Manager

Agenda Item: **Resolution 2021-35** Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, For The Expansion Of The Previously Approved Sea Life Amusement Park And A Marine Educational Facility, To Include A 15,200 Square Foot Warehouse, Office, And Lab Space, At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.

RECOMMENDATION: Planning Department staff recommends conditional approval of this amendment request.

APPLICANT/OWNER: Florida Keys Animal Encounters, LLC

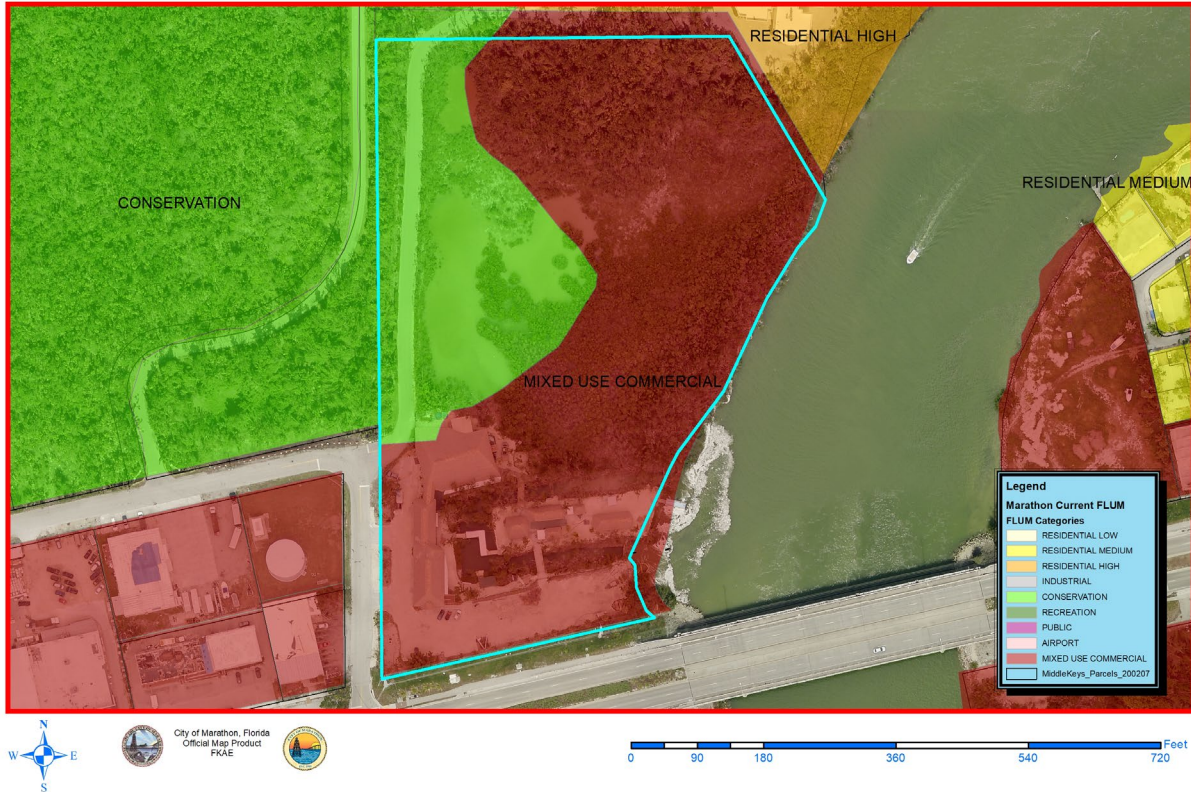
LOCATION: The subject property is located on the northeastern corner of the intersection of Overseas Highway and 117th Street, Gulf, near Mile Marker 53 and is legally described as Part of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, having Real Estate Number 00104130-000000



REQUEST: Amendment to a Conditional Use Variance Approval for the Development of the Florida Keys Animal Encounter Center.

FUTURE LAND USE MAP DESIGNATION: Mixed Use Commercial and Conservation
See Figure 2.

Figure 2 - Future Land Use Map



ZONING MAP DESIGNATION: Mixed Use (MU) and Native Area (C-NA) See Figure 3.

Figure 3 – Zoning Map



LOT SIZE: 1.7 acres (area proposed for development)
8.99 acres (entire site)

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	Residential High (RH) and Native Area (C-NA)	Vacant land and Seawatch Condominiums
East	n/a	Vaca Cut
South	Mixed Use (MU)	Captain Hook’s, Fish Tails Restaurant, Marathon Lady Charters
West	Mixed Use (MU) and Native Area (C-NA)	Auto Store, State-owned vacant property

EXISTING CONDITIONS:

The project site consists of one parcel that has been previously developed as an amusement and sea life park known as Aquarium Encounters.

PROPOSED REDEVELOPMENT:

Office, laboratory, warehouse: 15,200 sq. ft.

BACKGROUND:

On November 8, 2005, City Council passed Resolution 2005-159 (Exhibit A), approving a Major Conditional Use permit for Florida Keys Animal Encounters, LLC. The Florida Keys Animal Encounter Center will be a marine educational facility that provides visitors the opportunity to learn about marine animals. The project included a 2,800 square foot Animal Encounter Center, a 6,000 square foot office building for the Dynasty Marine corporate office, an encounter tank, and various accessory uses. The original approval also consisted of a total of five (5) affordable/workforce housing units to be located above the two buildings onsite.

The site also includes a “U” shaped canal with an island in the center. The project was approved with new bridges to the island, a number of view platforms through the mangroves and onto the canal, and a new dock into Vaca Cut. The site will also feature walking paths and information kiosks throughout. The remainder of the site, which is primarily a tidal estuary, will be undisturbed and undeveloped.

The applicant went through an amendment to the conditional use approval to allow the following changes in 2010. Resolution 2010-40 approved the following changes:

- The project would no longer include any workforce housing units on site. The applicant built a deed restricted affordable duplex located on 7th Avenue, Gulf that

is used to house the employees of the company. There is no Land Development Regulation based requirement for the project to provide workforce housing onsite. Consequently, the approval of this amendment will return the two affordable housing allocations that were awarded to the project under Resolution 2005-159 back to the City.

- The main 2,800 square foot Animal Encounter Center would be a tiki hut, thatch roof style building.
- The parking area would be permeable, reducing the amount of fill required for the project.
- Other minor changes to the site plan include: the encounter tank would be constructed of fiberglass instead of concrete, the proposed office building would be slightly larger (6030 sq/ft vs. 6000 sq/ft), and the location of the food concession area had been changed.

The applicant is now proposing an amendment to increase the institutional area to 15,200 square feet and locate it within the uplands near the northern end of the property.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Conditional Use Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

A. The proposed use is consistent with the Comprehensive Plan and LDRs;

This site is located within the Mixed Use Commercial and Conservation Future Land Use District.

Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial land use category is to provide for the establishment of mixed-use development patterns and to recognize established mixed use development patterns within the City.”

Policy 1-3.1.4 also states that the “principal purpose of the Conservation land use category is to provide for the preservation of natural and historic resources and passive resource-based recreational uses.” Development on the site will not disturb the Conservation area of the parcel. However, a small portion is proposed to be disturbed to provide access to the MU portion of the site.

The area of development on the parcel included in the proposed project has a Mixed Use (MU) zoning designation. The purpose of the district is described below:

- Section 103.09 Mixed Use Districts of the Land Development Regulations (LDRs) states, “The MU zoning district is designed to accommodate a wide variety of commercial and

retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor... The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large”.

Conditional Use approval is required pursuant to Table 103.15.1. In the Mixed-Use District, the specific use of, “Amusement or Sea life parks” requires Conditional Use approval.

The first building of 2,800 square feet was developed using existing commercial floor area credited to the site. The remaining ~~6,030~~ 15,200 square feet of commercial floor area proposed under phase II of the project must be applied for and allocated through the Commercial Building Permit Allocation System (CBPAS).

The project acreage is adequate for the proposed development. The following table assesses required acreage for the proposed use.

Type of Use	Amount	Square Feet Required	Site Utility
Commercial Retail – medium intensity (Encounter Center)	2,800 sf	6,222 sf	8.4%
Institutional (office, laboratory)	6,030 15,200 sf	20,100 50,667 sf	68.0 %
Total	-	-	76.4%

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

B. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;

This site is located within the Mixed-Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed-Use Commercial land use category is to provide for the establishment of mixed-use development patterns and to recognize established mixed use development patterns within the City.” The proposed project is compatible with adjacent uses and consistent with the overall land use pattern, which is heavily focused on retail sales and service and commercial activity along the U.S. 1 corridor. The development of the site will result in significant improvement to the site development quality, including landscaping and stormwater management. These improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, it is staff's opinion that the request is ***in compliance*** with the requirements of these sections.

C. The proposed use shall not adversely affect the health, safety, and welfare of the public;

The proposed use is the development of new commercial buildings which are not expected to have any adverse impact on the health, safety, and welfare of the public.

The City Fire Marshal has reviewed the project plans and provided comments at the Technical Review Committee Meeting outlining minimum requirements for the project, including the following:

- Must comply with NFPA 1 and NFPA 101 must provide access for Firefighting and Rescue equipment.
- Must be able to supply appropriate water supply for structure.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final evaluation of floodplain compliance will occur as part of building permit review.

Therefore, with the below conditions, the request is ***in compliance*** with the requirements of these sections.

- Must meet all conditions of the Fire Marshal prior to permit issuance.

D. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment;

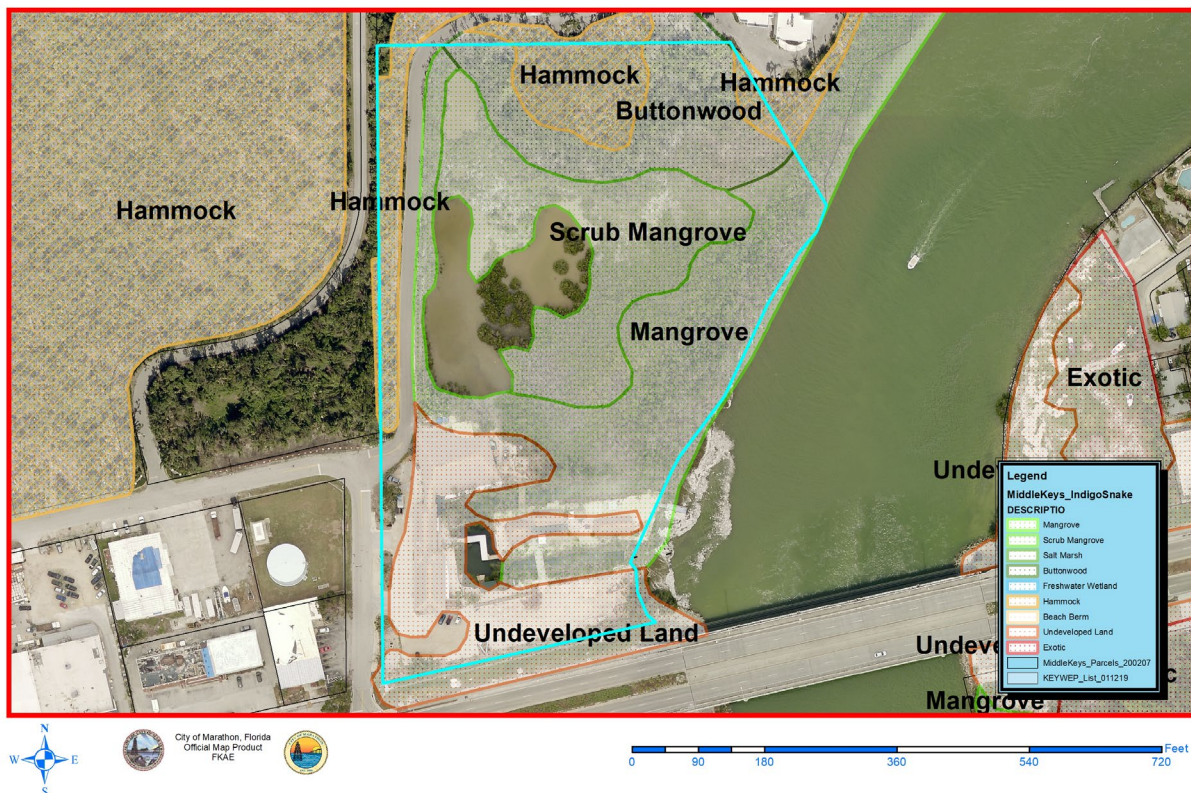
The proposed development footprint is within the MU portion of the parcel. The structure is proposed in the upland area that is classified as low-quality hardwood hammock. According to table 106.16.1 low quality hammock has a 50% open space ratio. The applicant is proposing an wetland setback of 25', which is less than the code required 50' as noted in E. 6 below, but was approved by the Planning Commission for the variance.

Previous approval included restoration activities and a subsequent Conservation Easement are proposed within areas of the parcel zoned C-NA as required by the South Florida Water Management District permit. The above noted conservation easement can be expanded to line up with the neighboring properties conservation easement. Therefore, a conservation easement in a form approved by the City Attorney must be provided for the wetland area. Transplantation of native vegetation on site will be the priority. Such vegetation must survive for one year after transplantation. Any native vegetation that does not survive or is not a type that handles transplantation well will be mitigated in a ration of three trees for every one tree removed.

The applicant has submitted updated preliminary stormwater/drainage plans as required by the Conditional Use permit. City approval is required for the stormwater management system prior to building permit approval.

Figure 4 shows that this area falls under the category of mangroves. Should any development necessitate the removal of existing native vegetation within these areas an impact determination will be made using the Species Assessment Guides.

Figure 4
Species Focus Area Habitat



Site landscaping will consist of 75% native species, per Chapter 107, Article 8. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Therefore, the request is ***in compliance*** with the requirements of these sections.

- A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- City approval is required for the stormwater management system prior to building permit approval.
- Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
- To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human

encroachment is less likely to occur.

- Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
- Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.

E. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:

1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in cases of fire or catastrophe;

Access to the site is via Richard Street (aka 117th Street Gulf) which intersects with US 1.

The applicant submitted a Level III traffic study, prepared by Carter & Burgess Inc., in conjunction with the original approval in 2005. The study reported that while more trips would be added to this section of U.S. 1, there was adequate reserve capacity to absorb these new trips. With the proposed elimination of the five (5) workforce housing units in 2010, that amendment generated a less intense use than the original submittal. With this amendment the additional 9,170 square feet would generate 46 additional daily trips. At the peak demand hours, there would be 6 trips at the peak morning traffic (4 entering & 2 leaving), 6 trips at the peak evening traffic (5 leaving & 1 entering).

The Assistant City Fire Marshal has reviewed the proposed development plans and circulation is acceptable. Planning Commission recommended that the applicant work towards expanding the access road to Seawatch to provide greater access.

Therefore, with the below conditions, it is staff's opinion that the request is *in compliance* with the requirements of these sections.

- Applicant will expand the width of the access road to the greatest extent practicable. Should the expansion be denied by any agency, the denial shall be documented, and the condition shall be severable and not affect any other term or condition of the conditional use approval.

2. Off-street parking and loading areas where required, with particular attention to item 1 above;

Parking requirements are outlined in Sections 107.46 (Parking Schedule).

Use	Code Citation	Requirement	Spaces Required	Spaces Provided
Retail Sales and Service	107.46.1	3 per 1,000 sf of GFA, plus 1 per	21	36

		employee at the largest shift		
Warehouse/Storage	107,461	3 per 1,000 sf of GFA	16	8
Total			37	45

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 37 required spaces, 2 handicapped spaces are required. Two additional spaces are provided for this area that in addition to the two that are previously provided.

Per Section 107.48, the Code also requires bicycle parking to be provided at a rate of one space for every ten parking spaces or two spaces for each public and employee entrance, whichever is greater. A bicycle rack is provided.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

3. The noise, glare, or odor effects of the conditional use on surrounding properties;

No detrimental noise, glare or odors are expected to be generated by any of the uses.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections.

4. Refuse and service areas, with particular reference to locations, screening, and Items 1 and 2 above;

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The existing development meets this criterion. The site plan does not indicate that the dumpsters are screened and located for easy access and waste removal.

Therefore, with the below conditions, the request is *in compliance* with the requirements of this section.

- Final site plan must show screened dumpster enclosure prior to permit issuance.

5. Utilities, with reference to location and availability;

Chapter 107, Article 13, establishes the City’s Concurrency Management and certification requirements. This Conditional Use constitutes the City’s Concurrency Level of Service Certificate, as follows:

- Water: The Florida Keys Aqueduct Authority (FKAA) will provide potable water for the facility.
- Wastewater: This site is located in Service Area 5 of the City’s Wastewater Treatment Project and will connect to the City Wastewater system when available.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.

- Electric: Florida Keys Electric Cooperative Association, Inc. (FKEC) will provide power to the development.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards.
- Roadways: The applicant has submitted a traffic study which meets the requirements for the Conditional Use.

Therefore, with conditions, the request is ***in compliance*** with the requirements of these sections.

- City approval is required for the stormwater management system prior to building permit approval.
- City approval of the connection to the city wastewater utility will be required.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

6. Screening and buffering with reference to type, dimensions and character;

Section 107.71 requires that parcels with an MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along US 1. The proposed Streetscape Treatment Type 1 is in compliance.

The portion of the property that is zoned Conservation Native Area (C-NA) is bordered by a portion of Conservation Native Area (C-NA) to the north and west, which requires no buffer. The portion of the property that is zoned Mixed Use (MU) is bordered to the north by Residential High (RH) which requires a Medium Type buffer. This portion of the parcel is primarily natural habitat which creates an effective natural buffer. This buffer will be further increased by the relocation of the native vegetation within the building footprint. The applicant is proposing a native transition buffer between the developed and the native area portion of the parcel.

An area of the property zoned Mixed Use (MU) is adjacent to 1stAvenue which requires a Streetscape Type 3 Buffer. The proposed Streetscape Type 3 Buffer is in compliance.

Section 107.66 requires that parking areas be landscaped with canopy trees positioned to provide, at maturity, 50% canopy coverage of the paved parking areas or with canopy trees located within landscaped islands every ten (10) spaces and within linear landscaped islands between head-to-head parking. The proposed site plan shows the correct quantity of landscape material.

At the time of permitting, the applicant will provide the City with a list of all native trees that will be impacted by development with a mitigation and/or transplantation plan to be approved by the biologist. Additionally, all landscape plans, including parking lot landscaping, must be approved by the biologist at time of permitting.

The submitted plans show use of 75% native vegetation, as required by Code. All invasive exotic vegetation, including Brazilian Pepper and Australian Pine, must be removed from the site as a condition of approval.

The minimum setback requirements for structures in the MU district are as follows:

Front (Richard Street)	30 feet
Side (U.S. 1)	10 feet
Shoreline	20 feet from Mean High Water Line (MHWL) or landward edge of the mangroves
Wetlands	50 feet

The proposed site plan shows that the structures will meet the required setbacks, excluding the wetland setback. Thus, the applicant is seeking the variance noted above.

Therefore, with the below conditions, the request is **in compliance** with the requirements of this section.

- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.

7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding uses;

A review of sign requirements at this stage in development approval is not necessary; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs.

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. The applicant will be required to submit a detailed lighting plan for approval prior to Building Permit issuance.

Therefore, the request is **in compliance** with the requirements of these sections.

- All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- A final lighting plan must be submitted prior to permit issuance.

8. Required yards and other open space;

The open space requirement for the Mixed Use (MU) land use district is 20%, as per Table 103.15.2 of the Code. According to table 106.16.1 low quality hammock has a 50% open space ratio. Previous calculations provided by the applicant show that site had 242,299 square feet of open space. The portion of the site zoned C-NA will not be developed, thus having a 100% open space ratio.

Therefore, it is staff's opinion that the request is **in compliance** with the requirements of these sections.

9. General compatibility with surrounding properties; and

The character of the immediate vicinity of the parcel can be described as a mix of uses, with vacant native area to the north and northwest, residential to the north on the other side of the native area, and commercial to the west and south. As this property is along U.S. 1, where the majority of commercial activities occur, developing the site to include the large commercial operation at the front and preserved native area to the middle, and further commercial within the upland area is consistent with the character of the area.

Section 107.40 restricts the height of buildings to 42' as measured from the crown of the roadway or unimproved grade. The site plan shows that the proposed buildings are below 42'.

Therefore, it is staff's opinion that the request is *in compliance* with the requirements of these sections.

10. Any special requirements set forth in the LDRs for the particular use involved.

There are no special requirements set forth in the LDRs for this particular use, other than those reviewed above.

Therefore, it is staff's opinion that the request is *in compliance* with the requirements of these sections.

CONCLUSION:

The Conditional Use Approval is intended to allow for the integration of certain land uses and structures within the City of Marathon based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses. Conditional uses shall not be allowed where the conditional use would create a nuisance, traffic congestion, a threat to the public health, safety, or welfare of the community.

The proposed development is an amendment to a previously approved Conditional Use permit. The applicant is proposing changes to the site plan, most notably the increase beyond the previously approved second phase. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety, or welfare.

RECOMMENDATION:

The Planning staff recommended conditional approval of the commercial redevelopment of Florida Keys Aquarium Encounters to the Planning Commission. The Planning Commission voted 4-0 to recommend conditional approval of the development to City Council. The proposed conditions of approval are listed below.

Conditions of Approval

- 1) A CBPAS allocation for 15,200 square feet must be obtained prior to development of the second building;
- 2) Must meet all conditions of the Fire Marshal prior to permit issuance.
- 3) A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- 4) City approval is required for the stormwater management system prior to building permit approval.
- 5) A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- 6) Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
- 7) To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.
- 8) Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
- 9) Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
- 10) Applicant will expand the width of the access road to the greatest extent practicable. Should the expansion be denied by any agency, the denial shall be documented, and the condition shall be severable and not affect any other term or condition of the conditional use approval.
- 11) The applicant will meet all floodplain related requirements as part of the building permit process.
- 12) Final site plan must show screened dumpster enclosure prior to permit issuance.
- 13) City approval is required for the stormwater management system prior to building permit approval.
- 14) City approval of the connection to the city wastewater utility will be required.
- 15) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 16) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 17) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 18) All signs will be reviewed and approved for compliance with the City of Marathon LDR’s.
- 19) A final lighting plan must be submitted prior to permit issuance.
- 20) The applicant will obtain any required permits from SFWMD, DEP, and ACOE prior to building permit issuance.

Exhibit A

Sponsored by: Puto

CITY OF MARATHON, FLORIDA RESOLUTION 2005-159

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS AND RESIDENTIAL DWELLING UNITS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000

WHEREAS, on the 17th day of October, 2005, the City of Marathon Planning Commission and on the 8th day of November, 2005, the City of Marathon City Council, conducted properly advertised public hearings regarding the request submitted by Florida Keys Animal Encounters, LLC (the "Applicant"), for a major conditional use permit pursuant to Sections 9.5-69 of the City Code (the "Code"); and

WHEREAS, the purpose of the major conditional use permit is to allow the Applicant to develop commercial buildings and affordable residential dwelling units for a sea life amusement park and marine educational facility (the "Proposed Use") at the Property.

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


Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order Number 2005-15, a copy of which is attached hereto as Exhibit "A", granting a major conditional use to the Applicants for the Proposed Use. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 22nd day of November, 2005.


THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Bull, Mearns, Miller, Pinkus, Bartus
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney



**CITY OF MARATHON, FLORIDA
MAJOR CONDITIONAL USE
DEVELOPMENT ORDER # 2005-15**

A DEVELOPMENT ORDER APPROVING THE MAJOR CONDITIONAL USE APPLICATION SUBMITTED BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC, FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS AND RESIDENTIAL DWELLING UNITS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA (THE "PROPERTY"), HAVING REAL ESTATE NUMBER 00104130-000000; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Keys Animal Encounters, LLC (the "Applicant") owns the Property and applied for a Major Conditional Use approval to redevelop the existing commercial floor area and residential units on the Property which is located in the Suburban Commercial (SC) land use districts (the "Application"); and

WHEREAS, the City of Marathon Planning Commission (the "Commission"), in accordance with the provisions of Sections 9.5-22 and 9.5-69 of the City of Marathon Land Development Regulations (the "LDR's"), met to review the Application to determine its compliance with the applicable regulations on October 17, 2005; and

WHEREAS, the Commission recommended conditional approval of the Application to the City of Marathon City Council (the "Council"); and

WHEREAS, the Council in accordance with the provisions of Sections 9.5-21 and 9.5-69 of the LDR's, met to review the Application to determine its compliance with the applicable regulations on November 8, 2005; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by the Applicant and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. Based on the submitted site plan, the entire Property is 8.99 acres, but the portion to be developed is 1.7 acres. Currently the site includes 2,800 square feet of commercial floor area. The Applicant is proposing one 2,800 square foot commercial building with two (2) affordable

dwelling units, one 6,000 square foot commercial building with three (3) affordable dwelling units, and several accessory structures for the sea life amusement park, including an animal encounter tank.

2. In accordance with Section 9.5-65 of the Code, the Commission and Council considered and determined the Applicants met the following criteria:
 - a. The Proposed Use is consistent with goals, objectives and policies of the City Comprehensive Plan (the "Plan") and Chapter 9.5 of the Code; and
 - b. The Proposed Use is consistent with the character of the immediate vicinity of the parcel proposed for development; and
 - c. The design of the Proposed Use minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties; and
 - d. The Proposed Use will not have an adverse effect on the value of surrounding properties; and
 - e. The public facilities and services, including but not limited to roadways, park facilities, police and fire protection, hospital and medical services, hurricane shelter, drainage systems, refuse disposal, water and sewers, and schools are adequate; and
 - f. The Proposed Use complies with all additional standards imposed on it by the particular provisions of Chapter 9.5 of the Code, authorizing such use and by all other applicable requirements of the Code.

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

1. The handicap spaces must be 21 feet long.
2. Prior to issuance of building permits, the Applicant must submit stormwater management plans demonstrating the redeveloped Property will comply with the applicable City and State stormwater regulations. Additionally, no direct outfalls to Outstanding Florida Waters shall be permitted.
3. The Applicants will be required to install three (3) fire hydrants on the Property, upon the recommendation of the Fire Department. All new buildings shall require the installation of sprinkler systems and otherwise comply with all Fire Alarm System and Life Safety Code Requirements prior to issuance of any building permits.
4. Two (2) 120% Affordable ROGO allocations have been awarded to the project out of the City's bank of Affordable ROGO allocations. The units shall be for rental and employee housing only and the applicant shall record a restrictive covenant prior to the issuance of any building permits for such units. The restrictive covenant shall be for a minimum of fifty (50) years and shall be renewable for two (2) fifty (50) year periods. The developer will enter into an agreement with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable/workforce housing. This agreement shall be in place and approved by the City prior

to the issuance of a CO for the affordable/working force housing units. The remaining three (3) employee units must obtain Affordable ROGO allocations prior to development.

5. The affordable/workforce housing units must obtain a CO concurrent or prior to the CO for the commercial floor area of the respective building they are to be built in.
6. An NROGO allocation for 6,000 square feet must be obtained prior to development of the second building.
7. The applicant shall submit an application for a building permit(s) within one (1) year of the date of approval of the conditional use. Should the applicant fail to submit an application for building permit(s) prior to the expiration of this conditional use approval, the two (2) 120% Affordable ROGO allocations awarded under this conditional use approval shall be returned to the City.

VIOLATION OF CONDITIONS:

The Applicants understand and acknowledge that they must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicants or their successor or designee is in non-compliance with this Development Order or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a major conditional use is hereby GRANTED subject to the conditions contained herein.

RECORDING:

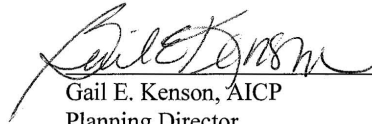
The Applicants shall at their sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City.

The Applicants shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph.

EFFECTIVE DATE:

The Director of Planning shall sign this Development Order, and it shall not take effect for thirty (30) days following the date it is rendered/filed with the City Clerk. During that time, the major conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this Development Order until said appeal is resolved.

23 Nov 05
Date


Gail E. Kenson, AICP
Planning Director

This Development Order was filed in the Office of the City Clerk of this 23 day of Nov, 2005.


Cindy L. Ecklund, City Clerk

NOTICE

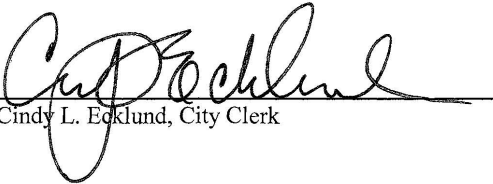
Section 9.5-72 (a) of Marathon City Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

Under the authority of Section 9.5-72(a) of the City of Marathon Land Development Regulations, this Development Order shall become null and void with no further notice required by the City, unless a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within six (6) months of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this Development Order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Community Affairs may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Florida Keys Animal Encounters, LLC, 10602 7th Avenue, Marathon, Florida 33050, this 23 day of November, 2005.



Cindy L. Ecklund, City Clerk

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-35**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102 ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED “CONDITIONAL USE PERMITS”, FOR THE EXPANSION OF THE PREVIOUSLY APPROVED SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, TO INCLUDE A 15,200 SQUARE FOOT WAREHOUSE, OFFICE, AND LAB SPACE, AT 11710 OVERSEAS HIGHWAY, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000.

WHEREAS, Florida Keys Animal Encounters LLC. (The “Applicant”) filed an Application on March 22, 2021 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed redevelopment of a Marine Life facility to include warehouse, office space and laboratory; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and LDRs and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, the City of Marathon Planning Commission approved the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, on the 8th day of June, 2021, the City Council (the “Council”) conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2021-06, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Florida Keys Animal Encounters LLC, subject to the Conditions imposed. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13TH DAY OF JULY 2021.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, 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:

Steven T. Williams, City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2021-06**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102 ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS ENTITLED “CONDITIONAL USE PERMITS”, FOR THE EXPANSION OF THE PREVIOUSLY APPROVED SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, TO INCLUDE A 15,200 SQUARE FOOT WAREHOUSE, OFFICE, AND LAB SPACE, AT 11710 OVERSEAS HIGHWAY, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000..

WHEREAS, Florida Keys Animal Encounters LLC (The “Applicant”) filed an Application on March 22, 2021 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant has proposed redevelopment of a Marine Life facility to include warehouse, office space and laboratory; and

WHEREAS, City staff reviewed the Applicant’s request for a Conditional Use Permit determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and LDRs and further that there was no substantial impact on the City’s Level of Service (LOS); and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, on the 17th day of May, 2021, the City of Marathon Planning Commission conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, the City of Marathon Planning Commission approved the request submitted by the Applicant, for a Variance pursuant to Chapter 102, Article 20 of the LDRs; and

WHEREAS, and on the 8th day of June, 2021, the City Council conducted a properly advertised public hearing regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in

Compliance with the City's Comprehensive Plan and LDRs, is consistent with its policy to encourage the development of residential properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the Council has duly considered the recommendation of the PC, and the information and documentary evidence submitted by the applicant and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The Applicant has proposed redevelopment of the Marine Life facility to include warehouse, office space and laboratory; on developed land as shown in Exhibit 1.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required, with particular attention to item 1 above;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

Conditions of Approval

1. A CBPAS allocation for 15,200 square feet must be obtained prior to development of the second building;
2. Must meet all conditions of the Fire Marshal prior to permit issuance.
3. A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
4. City approval is required for the stormwater management system prior to building permit approval.
5. A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
6. Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
7. To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.
8. Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
9. Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.
10. Applicant will expand the width of the access road to the greatest extent practicable. Should the expansion be denied by any agency, the denial shall be documented, and the condition shall be severable and not affect any other term or condition of the conditional use approval.
11. The applicant will meet all floodplain related requirements as part of the building permit process.
12. Final site plan must show screened dumpster enclosure prior to permit issuance.
13. City approval is required for the stormwater management system prior to building permit approval.
14. City approval of the connection to the city wastewater utility will be required.
15. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
16. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
17. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
18. All signs will be reviewed and approved for compliance with the City of Marathon LDR’s.
19. A final lighting plan must be submitted prior to permit issuance.

20. The applicant will obtain any required permits from SFWMD, DEP, and ACOE prior to building permit issuance.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use permit is hereby GRANTED subject to the conditions specified herein.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

Date

Brian Shea
Director of Planning

This Development Order was filed in the Office of the City Clerk of this ____ day of _____, 2021.

Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Economic Opportunity waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Florida Keys Animal Encounters LLC, 11710 Overseas Hwy Marathon FL, 33050, this ___ day of _____, 2021.

Diane Clavier, City Clerk

