



**City of Marathon City Council Agenda**  
**Council Chambers, 9805 Overseas Hwy., Marathon**  
**Tuesday, January 8, 2019 5:30 P.M.**

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Approval of agenda and consent agenda** [Approval of Consent Agenda passes all routine items indicated by asterisk (\*). Consent Agenda items are not considered separately unless a council member so requests. In the event of such a request, the item is returned to the Regular Agenda.]
5. **City Council Items**
  - \*A. Approval of Minutes ..... 1
  - B. Animal Waste Discussion (Vice Mayor Cook)
  - C. Community Announcements .....15
  - D.
6. **City Manager Report**
  - A. Parks and Recreation Report.....16
  - B. Marina Report .....19
  - C. Request for Private Attorney-Client Session on January 22, 2019
  - D. Parks and Recreation Recognition from Monroe County Board of Health
  - E.
7. **Citizens' comments on agenda items not scheduled for public hearing and items other than those appearing on the agenda** [Those who have signed in will be given the first opportunity to speak. Time is limited to 2 minutes per speaker and 30 minutes total time for this agenda item.]  
**TIME CERTAIN TO 6:30 PM OR AS SOON AS POSSIBLE THEREAFTER OR AFTER THE LAST AGENDA ITEM; WHATEVER COMES FIRST**
8. **Quasi-Judicial Public Hearing:** Please be advised that the following items on the agenda are quasi-judicial in nature. If you wish to comment upon these items, please inform the Clerk by filling out the available sign-up form. An opportunity for persons to speak on the items will be made available after the applicant and staff has made their presentations on the items. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, each person who gives testimony may be subject to cross-examination. If you refuse either to be cross-examined or to be sworn, your testimony will not be considered. The general public will not be permitted to cross-examine witnesses, but the public may request the Council to ask questions of staff or witnesses on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization. (Councilmember's to communicate ex parte communication.)

**A. Resolution 2019-01** - Consideration Of A Request By James Ruggio, For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits”, Authorizing The Construction Of A Boat Ramp On A Developed Residential Parcel, Subject To Conditions Imposed, For Property Described As Block 1 Lot 70 Amended Plat Of Flamingo Island Estates Boot Key PB5-121, Monroe County, Florida, Having Real Estate Number 00356140-000000.....22

**B. Resolution 2019-02**, Consideration Of A Request By Holiday Inn Express & Suites For A Time Extension For Approvals Granted Pursuant To Resolutions 2014-105 And 2015-37 Pertaining To The Granting Of Twenty-Five (25) Transient Residential Units (TRUs) For A Project Approved By The City To Expand The Holiday Inn Express & Suites By A Total Of Twenty-Seven (27) Hotel Units Approved Pursuant To Resolutions 2014-61 And 2014-62 For A Conditional Use Permit And A Development Agreement Respectively; Providing That Said Conditional Use Permit And Development Agreement Were Approved For Time Extensions Pursuant To Resolutions 2017-47 And 2018-65; Providing That The Approval Of This Resolution Makes The Approved Times Frames For The Conditional Use Permit, Development Agreement And The Allocation Of Transient Residential Units (TRUs) Concurrent; Providing That Said Extension Request Is Issued For Property Which Is Legally Described As Part Of Government Lot 2, Fat Deer Key, Monroe County, Florida, Having Real Estate Numbers As Stated In The Resolution.....110

**C. Resolution 2019-03**, Approval Of A Request By Sapodilla Holdings, LLC For A Conditional Use Permit Pursuant To Chapter 102, Articles 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits,” Authorizing The Redevelopment Of The Property Located At 7200 Aviation Boulevard As A Marina And RV Resort With 25 Spaces, Legally Described As, Part Of The Master Plat Of North Marathon Shores, Key Vaccas, Government Lot 1 Section 2 Government Lot 2 And Parts Of Government Lot 3 And The Southwest Quarter Of Section 1 Township 66 Range 32 E And Lots 18 Through 22 Schmitt Subdivision Key Vaca And Part Of Abandoned Aviation Boulevard, Having Real Estate Numbers As Stated in the Resolution. Nearest Mile Marker 51.....116

**D. Resolution 2019-04**, Approving A Request By Sapodilla Holdings, LLC For A Development Agreement Pursuant To Chapter 102, Articles 8 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement,” Authorizing The Redevelopment Of The Property Located At 7200 Aviation Boulevard As A Marina And RV Resort With 25 Spaces, Legally Described As, Part Of The Master Plat Of North Marathon Shores, Key Vaccas, Government Lot 1 Section 2 Government Lot 2 And Parts Of Government Lot 3 And The Southwest Quarter Of Section 1 Township 66 Range 32 E And Lots 18 Through 22 Schmitt Subdivision Key Vaca And Part Of Abandoned Aviation Boulevard, Having Real Estate Numbers As Stated In The Resolution. Nearest Mile Marker 51.....143

**9. Ordinances for First Public Hearing**

**A. Ordinance 2019-01**, Amending Chapter 102, Article 15, “Temporary Placement Permits;” Chapter 103, Article 3, Section 103.15, Table 103.15.1, “Uses By Zoning District;” And Chapter 104, Article 1, Section 104.55, “Temporary Placement,” Of The City Code Of Ordinances, To Provide Minor Modifications To Allowances For The Temporary Placement Of Recreational Vehicles, Motor Homes, Mobile Homes, Or Other Temporary Residential Units After The Impact Of A Hurricane Or Other Natural Disaster; Providing For The Repeal All Ordinances Or Parts Of Ordinances Found To Be In Conflict, And Providing For Inclusion In The Code Of Ordinances; And Providing For An Effective Date.....176

**10. Resolutions for Adoption**

**A. Resolution 2019-05**, Modifying the City’s Wastewater Rate Policy to include an Alternative Water Supply Customer rate; Authorizing the City Manager to Administer Wastewater Rate Implementation Accordingly; And Providing An Effective Date.....184

**\*B. Resolution 2019-06**, Approving A Contract For “Liquid Sludge Hauling And Disposal Services” To Biosolids Distribution Services, LLC In The Amount Of \$75,000.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.....188

**\*C. Resolution 2019-07**, Accepting The Ranking And Recommendation Of The City’s Evaluation Team For Playground Equipment at Sombrero Beach; Authorizing The City Manager And City Attorney To Negotiate A Contract With The Top Ranked Firm Of Legacy Construction Services Group, Inc in the amount of \$133,000.00; And Providing For An Effective Date.....202

**\*D. Resolution 2019-08**, Providing For The City Of Marathon To Become A Member Of The American Flood Coalition; And Providing For An Effective Date. ....205

**E. Resolution 2019-09**, Approving An Assignment Of Development Agreement Pursuant To Section IV, W. Of The Development Agreement Between The City of Marathon And Seaward Landings, LLC (RE NO 00101050-000000) And Seaward Pointe, LLC (RE NO 00101050-000100); For Properties Located At 8700 Overseas Highway, Nearest Mile Marker 52, Which is Legally Described As Part Of Govt. Lot 4, Key Vaca, Monroe County, Florida, Having Real Estate Numbers 00101050-000000, 00101050-000100.....208

**11. Citizens' comments** [2 minutes per individual - Each individual has one opportunity to speak.]

**12. Council comments**

**13. Adjournment**

The public hearings will commence at 5:30 p.m., or as soon thereafter as business permits, in the Marathon City Council Chambers, 9805 Overseas Highway, Marathon, FL. All interested persons are invited to attend the meeting and participate in the discussion; or, written comments may be sent to the City of Marathon, c/o City Clerk, 9805 Overseas Hwy, Marathon, FL 33050.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the City Council with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based. Please contact the City Clerk at [clavierd@ci.marathon.fl.us](mailto:clavierd@ci.marathon.fl.us) if you would like to receive any of the items on the agenda by email.

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on December 11, 2018 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 5:30 p.m.

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Vice Mayor Steven Cook

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Mayor John Bartus, comprising a quorum

Also in attendance were:

City Manager, Chuck Lindsey

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Planning Director/Deputy City Manager George Garrett

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Marina Director, Sean Cannon

Parks and Recreation Director, Jimmy Schmidt

Fire Chief, John Johnson

Monroe County Sheriff's Office, Sherriff Ramsay and Captain Hiller

## **Approval of Agenda and Consent Agenda**

Mayor Bartus added Everglades Foundation Event Discussion as item 5F and Building Department Vision Discussion as item 5G under City Council items. Senmartin added Condition of Soccer Field Discussion as item 5H under City Council items and removed Resolution 2018-121 from the consent agenda.

**MOTION:** Zieg moved to approve the agenda as amended.

**SECOND:** Cook

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

## **City Council Items**

### **\* Approval of Minutes**

Shriner Paper Drive February 16<sup>th</sup> at 107<sup>th</sup> & 109<sup>th</sup> Streets (Councilmember Senmartin) – Senmartin explained this fundraising event was for a good cause and wanted to make sure the Council was okay with it.

**MOTION:** Zieg moved to approve the paper drive

**SECOND:** Cook

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

American Flood Coalition Discussion (Mayor Bartus) Bartus explained that this has to do with the threat of climate change that affects sea levels, etc. Bartus explained the City was invited to join the coalition by Jim Cason, the former Mayor of Coral Gables. Bartus informed everyone the coalition was comprised of a group of community leaders to get the federal government to pay attention to and provide coastal cities with necessary policy changes, funds and incentives to address flooding and sea level rise. There is no cost to join and no legal obligation. Bartus informed everyone of their website, [floodcoalition.org](http://floodcoalition.org) Bartus asked that Marathon join in this effort. Council gave a head nod to bring back a resolution to the next meeting.

Christmas Eve Discussion (Councilmember Zieg) – Zieg explained that previous tradition was the volunteer firefighters had used the old ladder truck on Christmas eve to bring Santa and children around the City of Marathon. Unfortunately, Hurricane Irma brought an early end to that tradition. Zieg suggested that a few volunteer firefighters and deputies throw candy to children with a quick pass behind the airport, similar to Halloween but on Christmas eve for those who cannot see Santa on the 22<sup>nd</sup> of December. Zieg explained the suggested quick pass with no stops between 7 and 730 pm on Christmas eve from the fire station to 107<sup>th</sup> Street behind the airport neighborhood and back to US1 from Aviation Blvd. Gonzalez questioned why there was a sudden change last year to this community event. Lindsey explained that

volunteers went to where they wanted to go, but did not cover the entire City. Then volunteers and some on duty personnel covered the entire City in one night from Grassy Key to the Seven Mile Bridge. In 2015 was the last time this was completed. There was no control over how long they stayed on the truck, in 2015 we required lap belts, and in 2016 the volunteers also did a route. On Saturday the 22<sup>nd</sup> we will do the entire route of the City using on duty crews. The volunteers still have their vehicle, however it was flooded from Irma. Gonzalez asked for more stops on Christmas Eve. Zieg suggested looking into this for next year as we don't have the time to make this work this year for the entire route. Senmartin stated he liked the Christmas Eve event, and was not in agreement with just behind the airport on Christmas Eve. Chief Johnson explained that in 2015 was the last time we had completed the City with both volunteers and paid duty crew. The truck was rated for 40 people and had many more on it, and we were fortunate that there were no injuries. There was no control over how long people stayed on the truck or who was even on the truck at different stops. Last year we had a tremendous turnout. The old ladder was given back to the volunteers at their request. This year, we will be using on duty crews. The half hour might be okay, but if we made stops throughout the City, they don't complete the route sometimes in the past until midnight and if they have to go to a call, they will need to leave the route. Gonzalez stated one resort was added in addition to the Holiday Inn. Johnson also mentioned that we borrow the sled from Islamorada. Senmartin stated he liked when we did this on Christmas Eve, but he was not in agreement with just behind the airport. Senmartin suggested that next year we put out a qualified volunteer sign up sheet for Christmas Eve. Cook thanked Chief for volunteering to do this and was in favor of doing the route the Saturday before Christmas.

Mayor Bartus called for speakers

Karen Farley Wilkinson – spoke for keeping the Christmas Eve tradition.

Lindsey clarified that the volunteers could choose where they want to go. If we use paid firefighters, we need to be everywhere in the City.

John Grouten – spoke for keeping the tradition of Christmas Eve

Gerald Roussin – spoke for keeping the Christmas Eve tradition.

Vickie Tashijan – spoke for keeping the Christmas Eve tradition.

**MOTION:** Gonzalez moved to have the Santa event on the 24<sup>th</sup> of December.

**SECOND:** Zieg

Bartus stated his preference would be to keep this on the 24<sup>th</sup> as tradition. Bartus questioned the Chief if it would be a hardship to do this on the 24<sup>th</sup> instead of the 22<sup>nd</sup>. Chief Johnson responded explaining he would have to request to use the sled from Islamorada and it would be a smaller parade since he did not have the personnel. Zieg suggested just a quick pass on the 24<sup>th</sup>. Gonzalez stated then they would be doing the event twice. Chief explained the quick pass would be an hour and the entire City would be approximately eight hours. Chief also

explained the person who drives the truck would also be responsible for fighting any potential fires as he does not have extra units.

Zieg amended his second. Gonzalez did not agree to the amendment. Zieg withdrew his second. No one else seconded the motion; motion died.

**MOTION:** Zieg moved to go with the plans outlined by the Chief and on the 24<sup>th</sup>, a small parade by on duty this year and next year work on having the event on the 24<sup>th</sup>.

**SECOND:** Cook

Senmartin clarified what would happen on the 24<sup>th</sup> and Senmartin wanted the quick 24<sup>th</sup> through the whole town. Cook suggested Winn Dixie parking lot on the 24<sup>th</sup>. Zieg commented that it would be reasonable to do this instead of the area behind the airport. Zieg amended his motion to go to Winn Dixie parking lot on the 24<sup>th</sup> and not behind the airport. Cook amended his second.

The Council recommended that the manager work to have this event on the 24<sup>th</sup> in the future throughout the City. Lindsey promised to figure out a way to hold the event on the 24<sup>th</sup> in the next year, but because of logistics could not pull this off this year.

Vote of the Motion:

Yes: Zieg, Cook, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

Lindsey also recognized the MSCO and FHP that also assisted with the event.

Bartus acknowledged Sherriff Ramsay.

Community Announcements - the announcements were read. Zieg informed everyone the County would be closed on the 24<sup>th</sup> and 31<sup>st</sup> in addition to the days listed and questioned if the manager would consider letting the employees leave early those days. Lindsey informed everyone Governor Scott closed state offices on the 24<sup>th</sup> and 31<sup>st</sup> and recommended giving those days off to City staff. Senmartin informed everyone of the December 15<sup>th</sup> BBQ fundraiser for Samantha Scholfield at the American Legion. Bartus informed everyone not to miss the San Pablo prayer garden holiday light display.

Everglades Foundation Conference (Mayor Bartus) – Bartus informed everyone the conference would be held January 10-12 and asked the Council for permission to represent the City at the Conference. The Council gave head nods.

Building Department Vision Discussion (Mayor Bartus) – Bartus commented that the building department has been overwhelmed since Irma and they have been working hard. Recently, he received criticism. Contractors and residents are frustrated. Bartus explained that he would like

the City to do what they could when there is room for interpretation on the side of the taxpayer in the Florida Building Code and would like to timely issue permits and treat everyone the same. Cook stated he was not sure where the line was on being lenient or hard, there is a line legally and there are many rules that direct us, and he believes everyone is doing their part on getting things done correctly. Senmartin questioned where we were going with this and asked that everyone be treated the same. Bartus explained he wanted to make sure the people who have reached out to him knows that the Council is hearing them and changes are coming that will address these issues. Senmartin stated he spoke with a resident the other day that complained his permit was taking 8 months already, and Senmartin explained how to look it up on the City's website, and the permit was issued in June. The contractor did not express it to him or did not follow up; it is not always a city issue. Doug Lewis informed everyone permit tech and inspector ads were running, and we are speaking with the MT Causley contractor to lend us personnel to catch up the permit techs. The goal is by the end of January to be caught up. January 1<sup>st</sup> to go back to full, regular hours. We look at the code to protect all citizens. We do not want to damage our insurance rating, and don't want to allow things to be built that should not. Lewis was also looking at hiring a consultant firm for appraisals.

Conditions of Soccer Field (Councilmember Senmartin) – Senmartin explained the soccer coach had issues with the field after Hurricane Irma and felt the field was too dangerous for the children to play on, and the children are now playing at Marathon High School. Lindsey reported that there were millions of dollars of damages and so the City had to get creative since we have not seen any reimbursement funding; some County's have had to file bankruptcy. Lindsey explained we have had to prioritize what is most important, and the State promised to take care of the canals and then could not, the next two projects were the beach and the park, which came to a halt without reimbursement. The beach will be primarily done by July 4<sup>th</sup>. In the Park, there are only certain times to plant grass, and this will be done after the seafood festival. By the end of May we should be using the field again for soccer.

### **Citizens' Comments:**

Karen Farley Wilkinsen – asked the Council to pressure the State to fix all of the street lights on US1 as in many places it is dark.

Sherriff Ramsay explained he had been in contact with FDOT and they do not have any funding, and are talking about 2019 or 2020 to fix all of the street lights.

Diane Scott – spoke against the Sherriff's Department and State Attorney's office.

### **City Manager Report**

Building/Code Department Report – Lewis gave an overview of his written report and informed everyone the Code Magistrate was working really well. Code is working in segments, currently unsafe structures. Next staff will be working on categories, next category will be US1 and staff are still responding to other code complaints.



Monroe County Sheriff's Substation Report - Captain Hiller explained that there was a homicide in November and within twenty four hours with all hands on deck an arrest was made Thanksgiving day. Bartus thanked the Sherriff's office for all of their community involvement.

Public Works Report – Solis gave status updates on several projects including Aviation Blvd. Bike Trail explaining he was coordinating with the Aviation Blvd. and US1 road project consultants. Senmartin informed Solis of a stop sign that was down in Grassy Key and asked for the status of the street signs.

### **Quasi-Judicial Public Hearings**

**Resolution 2016-116** - Approving The Request For A Conditional Use Permit, For Gem Homes LLC, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Conditional Use Permits" With Proposed Densities Of Approximately 15 Affordable Housing Units Per Acre; Located At 250 Gulf Terrace; Which Is Legally Described As Part Of Lot 2 & Lots 8, 9 & Part Of Lots 7 & 10, Schmitt Subdivision, Section 2, Township 66, Range 32, Key Vaccas, Marathon, Monroe County, Florida; Having Real Estate Numbers 00101340-000000 And 00101340-000200, Nearest Mile Marker 51; And Providing For An Effective Date.

**Resolution 2018-117**, Approving The Request For A Development Agreement, For Gem Homes LLC, Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Development Agreement" With Proposed Densities Of Approximately 15 Affordable Housing Units Per Acre; Located At 250 Gulf Terrace; Which Is Legally Described As Part Of Lot 2 & Lots 8, 9 & Part Of Lots 7 & 10, Schmitt Subdivision, Section 2, Township 66, Range 32, Key Vaccas, Marathon, Monroe County, Florida; Having Real Estate Numbers as Stated in the Resolution, Nearest Mile Marker 51; And Providing For An Effective Date

Clavier swore in speakers.

Council stated they had no exparte communications since the last meeting.

Garrett gave an overview of the project which consisted of 9 affordable and 6 market rate units and outlined the conditions for approval.

James Barnhill – spoke against the development project explaining there was too much density and the intersection had a history of tragic accidents.

Richard McChesney with Spottswood, Spottswood, Spottswood and Sterling PLLC explained there were many traffic studies and have come up with a plan. McChesney informed everyone they will contribute 10% or up to \$70,000 as part of our fair share.

Zieg asked Sherriff Ramsay if he had a good idea of the time frame when the intersection would match the drawings presented. Ramsay explained the contractor was already hired and final design plan was to be completed May 6<sup>th</sup> and work was to being in June.

**MOTION:** Cook moved to approve Resolution 2016-116 based upon the testimony and evidence provided.

**SECOND:** Zieg

Senmartin stated that access to US1 was the biggest issue and the change in the road was the only reason he agrees to move forward. Bartus also thanked the Sherriff for moving the project along.

Vote of the Motion:

Yes: Cook, Zieg, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

**MOTION:** Cook moved to approve Resolution 2016-117 based upon the testimony and evidence provided.

**SECOND:** Zieg

Vote of the Motion:

Yes: Cook, Zieg, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

Consideration Of A Request By Holiday Inn Express & Suites For A Time Extension For Approvals Granted Pursuant To Resolutions 2014-105 And 2015-37 Pertaining To The Granting Of Twenty-Five (25) Transient Residential Units (TRUs) For A Project Approved By The City To Expand The Holiday Inn Express & Suites By A Total Of Twenty-Seven (27) Hotel Units Approved Pursuant To Resolutions 2014-61 And 2014-62 For A Conditional Use Permit And A Development Agreement Respectively; Providing That Said Conditional Use Permit And Development Agreement Were Approved For Time Extensions Pursuant To Resolutions 2017-47 And 2018-65; Providing That The Approval Of This Resolution Makes The Approved Times Frames For The Conditional Use Permit, Development Agreement And The Allocation Of Transient Residential Units (TRUs) Concurrent; Providing That Said Extension Request Is Issued For Property Which Is Legally Described As Part Of Government Lot 2, Fat Deer Key, Monroe County, Florida, Having Real Estate Numbers As Stated In The Resolution.

Clavier swore in speakers. Council stated they had no exparte communications. Garret explained the item and that the project would be completed within two years. Zieg questioned if the units would come back if not completed. Senmartin questioned if this was an

enforceable deal for the time. Garrett explained that until we issue the permit, the units are ours.

**MOTION:** Zieg moved to approve the extension

**SECOND:** Cook

Vote of the Motion:

Yes: Zieg, Cook, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

**Resolution 2018-118**, Consideration Of A Variance Request By Sapodilla Holdings, LLC, To Allow For A Reduction In North And South Setbacks; Pursuant To Chapter 102, Article 20, Section 102.115, "Review And Approval Procedures", For The Property Located At 7200 Aviation Boulevard, Legally Described As Part Of The Master Plat Of North Marathon Shores, Key Vaccas, Government Lot 1 Section 2 Government Lot 2 And Parts Of Government Lot 3 And The Southwest Quarter Of Section 1 Township 66 Range 32 E And Lots 18 Through 22 Schmitt Subdivision Key Vaca And Part Of Abandoned Aviation Boulevard, Having Real Estate Numbers as Stated in the Resolution

Consideration Of A Request By Sapodilla Holdings, LLC, For A Conditional Use Permit And Development Agreement Pursuant To Chapter 102, Articles 13 And 8 Of The City Of Marathon Land Development Regulations Entitled "Conditional Use Permits" And "Development Agreement" Respectively For The Redevelopment Of The Property Located At 7200 Aviation Boulevard As A Marina And RV Resort With 25 Spaces, Legally Described As, Part Of The Master Plat Of North Marathon Shores, Key Vaccas, Government Lot 1 Section 2 Government Lot 2 And Parts Of Government Lot 3 And The Southwest Quarter Of Section 1 Township 66 Range 32 E And Lots 18 Through 22 Schmitt Subdivision Key Vaca And Part Of Abandoned Aviation Boulevard, Having Real Estate Numbers As Stated in the Resolution, Providing For The Conditions And Requirements Of Development, Including, But Not Limited To Buffers, Building Heights, Setbacks, And Other Requirements.

Clavier swore in speakers. Cook, Gonzalez, Senmartin and Bartus stated they had exparte communications but that it would not affect their vote. Zieg stated he did not have exparte communications.

Garrett explained the variance proposal and conditional use and development agreement and informed everyone the recreational vehicles would have to leave during a storm.

Bill McCain, agent for the owner gave a PowerPoint presentation regarding traffic flow, low density and water runoff.

Zieg commented that on the airport map, part of the property is owned by the County, and

recalled that there was an issue with the right of way abandonment that the County owned it and the City could not give it away. Zieg questioned if we should resolve the issue before moving forward. Garrett explained the property appraiser maps show the abandoned piece as Rhyne's property, but he did recall there was an issue that would need to be resolved.

Jim Rhyne, owner of the property stated that at no time in more than ten years has the county or airport claimed the property.

Senmartin explained he had concerns regarding a berm versus a swale for stormwater and noise concerns and asked if generators could be prohibited. Senmartin asked that traffic be directional down Aviation to 107<sup>th</sup> Street with an obstruction that prevents a right turn. Senmartin also asked for a vegetation buffer along the canal to be double. Bill McCain explained there would be a swale and they would prohibit generators and he had no objection to directional traffic. Cook explained the seven houses directly across from the canal may have issues with lighting and asked if a fence inside the buffer to reduce the light could be a condition as well. Bartus asked that the transient units be added as a condition to move every 188 days. Senmartin reiterated no permanent structures.

#### Public Comment

Betsy Philipps – spoke against the resolution due to outstanding code violations.

Bartus called for a five minute break due to the power outage to make sure we were broadcasting and everything was back online.

Bartus called the meeting back to order at 8:04 pm.

Betsy Philipps continued her comments regarding the code violations and suggested a wall as an additional buffer.

Norman Philipps – presented a PowerPoint presentation and spoke of the code violations and 36 inches of fill with no permits.

Bettie Goodloe explained the owner has ignored rules and regulations and has not been responsible and has been in violation of the code.

James Rhyne explained the situation that has been that way and his plans to amend the property.

Doug Lewis explained that as far as he was aware, all code issues had been resolved.

Senmartin explained any lingering code violations will need to be cleared up.

Zieg commented on the condition of no new impacts to traffic, and agreed with Senmartin that that would be impossible without a traffic device. Zieg also mentioned the criteria for evaluating a conditional use permit and development agreement approvals regarding

screening and buffering that on page 132 of the packet reads the technical review committee made a recommendation to the planning commission to allow a reduced project and district boundary buffer, which was ignored by the planning commission. Therefore, he did not feel the variance should be allowed to go forward. Garrett explained 75 units would be the max density and the TRC approved this project, the project boundary buffer is actually about vegetation.

**MOTION:** Zieg moved to deny the variance.

**SECOND:** none

Motion died.

**MOTION:** Cook moved to table for further review

**SECOND:** Zieg

Migut questioned if the ownership was the potential issue, as the owner went through the procedures and we must give them a yes or no answer. Earlier in the hearing we learned there was a potential ownership issue. Migut explained he had drafted a condition to add if this was the issue. Cook explained he would table to research the different conditions based on the neighbors, project use. Migut suggested they may want to ask the applicant if they would want to continue this for another month.

Jim Rhyne stated he wanted to know the basis for not getting a decision is and the conditions; he can give answers, as he does not have to report to a board. Cook stated zero light buffer, a deed search, and traffic direction.

Migut explained property rights pertaining to the hearing, and evidence presented show that requirements have been met.

Senmartin questioned if the applicant would change the buffer to 25 percent (10 feet to 15 feet).

Rhyne stated this would not work, but he would do everything to enhance the buffer in spots. Senmartin questioned if this could be worked out with more time. Rhyne stated his intention would be to give as much buffer as possible. Gonzalez questioned if a wall could be built. Rhyne stated a split rail fence could be put up to stop access but not a wall. Rhyne stated he would answer or solve any issues now and wanted an approval or disapproval due to finance constraints.

Cook withdrew his motion.

Migut explained the options for the conditional use, development agreement and variance; approve or deny the variance this evening, the conditional use also has only one hearing, and the code is specific on the options, and recommended an additional condition.

**MOTION:** Cook moved to approve Resolution 2016-118 with a deed search, voiding the conditional use permit if ruled that he is not the proper owner of the property with condition #6 the variance shall be void ab initio if it is determined that the applicant does not own the property or the conditional use permit is denied as well as condition #7 of the enhanced light buffer other than vegetative

**SECOND:** Gonzalez

Vote of the Motion:

Yes: Cook, Gonzalez, Senmartin, Bartus

No: Zieg

Absent: None

Abstain: None

Vote on the Motion: 4 Yes, 1 No, 0 Absent, 0 Abstain

**MOTION:** Senmartin moved to approve the Conditional Use and Development Agreement with additional conditions: no generators, no right turn out of the complex with the addition of mechanical traffic control device, highest possible level of vegetation buffer, which may or may not be taken care of by the variance condition, stormwater retention to staff's approval.

**SECOND:** Cook

Rhyne asked Lewis to weigh in regarding the traffic control device. Bartus stated he and the Council have discussed this and have already weighed in.

Vote of the Motion:

Yes: Senmartin, Cook, Gonzalez, Bartus

No: Zieg

Absent: None

Abstain: None

Vote on the Motion: 4 Yes, 1 No, 0 Absent, 0 Abstain

**Resolution 2018-124**, Approving The Request For A Conditional Use Permit, For HJ3 Inc., Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Conditional Use Permits"; Authorizing The Development Of Seven (7) Duplexes On Properties Located At 57578 And 57468 Overseas Highway, Which Are Legally Described As Block 58, Lots 10, 11, 12, 13, 14, And 15, Crains Subdivision, Grassy Key, Monroe County, Florida, Having Real Estate Numbers as Stated in the Resolution. Nearest Mile Marker 57.5; And Providing For An Effective Date.

The Clerk swore in speakers. Council stated they had no exparte communications.

Garrett explained the project, conditions imposed and recommended approval with conditions.

Steve Hurley, explained HJ3 would meet all of the requirements outlined.

**MOTION:** Cook moved to approve Resolution 2018-124

**SECOND:** Zieg

Vote of the Motion:

Yes: Cook, Zieg, Senmartin, Gonzalez, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

### **Resolutions for Adoption**

\* **Resolution 2018-119**, Approving A Contract Between The City And Vernis And Bowling Of The Florida Keys To Serve As The Primary Alternative Counsel Other Than The City Attorney For Litigation And Conflict Representation As Well As Any Special Projects Requested By The City, Rescinding All Prior Agreements Of The Parties, Authorizing The Mayor To Execute The Agreement On Behalf Of The City, Expend Budgeted Funds, And Providing For An Effective Date.

\* **Resolution 2018-120**, Accepting The Ranking And Recommendation Of The City's Evaluation Team In Response to an RFQ for Construction Engineering And Inspection Services (CEI) For The Aviation Blvd. Multi-Use Trail Project; Authorizing The City Manager And City Attorney To Negotiate A Contract With The Top Ranked Firm Of RS&H; And Providing For An Effective Date.

**Resolution 2018-121**, Approving A Contract for Sludge Dewatering and Maintenance To Biosolids Distribution Services, LLC In The Amount Of \$370,000.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

Saus explained \$370,000 was his budget for the entire year, and the new company underbid the existing contractor.

Bartus called for speakers, hearing none, closed public comments.

**MOTION:** Zieg moved to approve Resolution 2018-121

**SECOND:** Senmartin

Vote of the Motion:

Yes: Zieg, Senmartin, Gonzalez, Cook, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

\* **Resolution 2018-122**, Amending Purchase Order #180037 For “Irma damaged electrical repairs to Area 6 Wastewater Treatment Plant” to Nearshore Electric, Inc. to an increased Total Amount Not To Exceed \$37,000.00; Authorizing The City Manager To Execute The Change Order And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date

**Resolution 2018-123**, Approving The First Amendment To The Employment Agreement Between Charles Lindsey And The City Of Marathon, Florida For City Manager Services; Authorizing The Mayor To Execute The Agreement On Behalf Of The City; And Providing For An Effective Date.

Lindsey explained the amendment mirrors the City Attorney’s contract; a vacation increase and term. Senmartin stated he was not in favor of removing the cap on vacation and wanted to make sure the manager used his vacation time. Cook thanked Lindsey for all of his hard work. Bartus and the Council agreed that he was the best person to assist us through the Hurricane.

**MOTION:** Gonzalez moved to approve Resolution 2018-123

**SECOND:** Cook

Vote of the Motion:

Yes: Gonzalez Cook, Senmartin, Zieg, Bartus

No: None

Absent: None

Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

**Citizens' Comments:**

Diane Scott asked that the bus stop be moved back to the previous location.

**Council Comments**

Gonzalez thanked staff and informed everyone Samantha, the girl that was hit by a car was miraculously back home with her family and thanked everyone for their prayers.

Zieg provided a history of events that happened December 11<sup>th</sup> and complimented Public Works crews who put up the Christmas decorations. Zieg thanked Jennifer Johnson for her part in going after FEMA reimbursement and thanked the rest of the staff and wished everyone a merry Christmas and happy new year.



Senmartin thanked staff and reminded Lindsey to take a vacation.

Cook informed everyone Mike Puto was in the hospital in Miami and needs our prayers and thanked Fire Rescue team, MSCO deputies, and FWC. Cook wished everyone a merry Christmas and a happy new year.

Bartus reminded everyone that 15 months after Hurricane Irma we have still not received reimbursement from FEMA. Bartus commented that the state needs to fix DEM and that Wes Paul resigned from DEM. Bartus thanked staff and wished everyone a happy holiday.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 9:13 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of December 11, 2018.

\_\_\_\_\_  
Diane Clavier, City Clerk

\_\_\_\_\_  
Date

DRAFT

**COMMUNITY ANNOUNCEMENTS**

<b><u>SUBJECT:</u></b>	<b><u>DATE:</u></b>	<b><u>TIME:</u></b>	<b><u>LOCATION</u></b>
Kilts in the Keys	1/11	5pm-7pm	Marathon Grill & Ale House
Florida Keys Celtic Festival	1/12 1/13	Saturday: 11am-7pm Sunday: 11am-5pm	Marathon Community Park
Monroe County Delegation Meeting	1/15/19	9am – 4pm	Council Chambers, 9805 Overseas Hwy.
Code Hearing	1/19	2:00pm	Council Chambers, 9805 Overseas Hwy.
MLK, Jr. Day City Hall Closed	1/21		
City Council Meeting	1/22	5:30pm	Council Chambers, 9805 Overseas Hwy.

**Please note that more than one Marathon City Council/Board/Committee member may participate in the meetings listed above.**



## CITY OF MARATHON PARKS AND RECREATION

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9805 Overseas Highway, Marathon, Florida 33050  
Phone: (305) 743-6598 Fax: (305) 289-5888

Date: January 8, 2019  
To: Honorable Mayor and City Council  
From: Jimmy Schmidt, Parks and Recreation Director  
Through: Chuck Lindsey, City Manager  
Subject: Parks and Recreation monthly report

### **Parks Programs**

**Skate Park** attendance remained steady throughout the month of December. Visitors from other parts of the U.S. have utilized the park during Christmas/New Year weeks. The park continues to be open nightly with an attendant occasionally from 4-10pm. The park is open every morning around 8am and is without an attendant until 4pm. Daily attendance records kept with an attendant present show average daily use numbers fluctuate between 1-9.

**Adult Basketball** is ongoing throughout the entire year. The Parks and Recreation Department offers this program one night a week throughout the fall. Pickup games are each Wednesday night from 7:00-9:30pm at Marathon High School gym. Cost per person for each session is \$5 per night or \$30 for the school year. This program is for adults age 18 and older. A total of 37 have registered for and attended the fall program. To date, Andre Garvey, park staff, organizes and runs this program. Nightly attendance averages 12-18 for the fall program. This program will run until the end of the school year.

Andre Garvey, P& R staff, organized this event.

**Adult Volleyball** is ongoing throughout the school year and follows the same breaks as the Monroe County Schools calendar. Pickup games are on Monday nights from 7:00-9:30pm at Marathon High School gym. Cost per person for each session is \$5 per night or \$30 for the season. This program is for adults age 18 and older. Nightly attendance averages between 9-14 during this fall program. Andre Garvey, park staff, has organized and runs the program. yrstyn Ransom, P&R staff, organized this event.

**Home School PE** is for all ages of children who are home-schooled and wish to participate in a weekly PE program. This program meets on Tuesdays at 2pm for an hour each week during the school year calendar. This program is FREE. Austin Tubbs and Jaymie Robinson, Park Staff, organize and run this weekly. To date, 34 have registered. Ages range from 5-16. Average

attendance so far this school year is 22. The program follows the Monroe County School Calendar year.

**Youth Basketball** teams began practicing in December. This program is for ages 6-14 and the cost was \$40 for all children how registered prior to the program's start. The cost then increased to \$50. There are 120 players and 15 teams. Games will be played through February 17th and will end with awards on that date.

**Holiday Lights** took place November 25th at Community Park. Santa was brought to the festivities by a City of Marathon Fire Truck. Hot chocolate was served and cookies and desserts were generously donated by Publix. Many youngsters enjoyed decorating cookies while at the event. Lights were turned on in Phase I of the park and remained on each night through the new year. Many visitors enjoyed walking through the park and seeing the traditional and not-so-traditional light displays.

**Thanksgiving Mini-Camp** took place the three days prior to Thanksgiving at Community Park. A total of around 40 campers enjoyed field trips to a variety of places, including the Key West Conch Train, Boondocks Putt Putt golf, the Key West Eco Discovery Center, and the new splash pad that was nearby. Campers paid \$50 for the week or \$20 per day. Over fifty campers attended. Ali Adams, P&R staff, organized this event.

**Havana Nights** took place Saturday, November 10th, between 5-10 pm at Community Park soccer fields and amphitheater. Activities included dancing, a DJ, and domino tables with prizes. Arts and Craft activities were available for children and included making maracas. The Marathon High School Culinary Department sold food for this event. Charlotte Quinn, P&R staff, organized this event.

**Taste of the Islands** was a community event that was held at Community Park on Sunday, November 11th, from 11am-5pm. This event is organized annually by the Marathon BPW Club. Proceeds from this event go toward scholarships awarded to MHS students during the spring.

**Under the Stars** showed the movie *The Blind Side* on Saturday, November 17th. This was a free family movie at Community Park. Attendance was around 40. Charlotte Quinn, P&R staff, organized this event.

### **Upcoming Programs**

**Start Smart Basketball** registration opened on December 15th. This is a beginner program for ages 4-5 as an introduction to the basic skills of basketball. The program will provide age-appropriate equipment and will meet on Saturday mornings at MHS gym. Registration is now open and this program begins January 12th at 9am. Cost is \$40 and skill taught will include shooting, passing, and team-work. Coach Andre Garvey, Parks and Recreation Staff, organizes this event.

**Under the Stars** will show the movie *Elf*, rescheduled from its December date. It will be shown at the Community Park amphitheater on Saturday night, January 19th, starting at dusk. This is free for all ages. Bring a blanket, chairs, coolers, and any snacks. Charlotte Quinn, P & R staff, organized this event. Charlotte Quinn, P & R staff, organized this event.

**Family Fun Fest** is an annual event offered by the Parks and Recreation Department. It will take place on Saturday, January 26th, at Community Park soccer fields. This is a free event for all and there are over 30 vendors who are planning on attending this fun event. It runs from 11am-3pm and opening ceremonies will be at 9am at the amphitheater. Ali Adams, P & R staff, organized this event.

**Fishing Fun/Fishing Skills** will take place on Saturday, February 23rd at Crane Point's shoreline. The Parks & Recreation Department was awarded an equipment grant from the *Fish Florida* foundation for 80 fishing poles and tackle boxes. This organization makes license plates and proceeds go to education of youth about fishing in Florida. These poles will be awarded to any angler who goes through the learning centers during the event. It starts at 10am and ends at noon. Anyone who wants to attend will need to meet by 9:45am in the Crane Point parking lot for a shuttle transport to the fishing area. All bait and fishing equipment will be provided. Ali Adams, P & R staff, organized this event.

**Marathon Youth Club (MYC)** will be registering youth for both T-ball and Youth baseball. The parent in charge is **Caitrin Piscetello**. Contact her by email for more information at [caitrin@hotmail.com](mailto:caitrin@hotmail.com). T-ball is for ages 4-6 and Little League Baseball is for ages 7-12.

**Spring Camp** will be offered by the Parks & Recreation Department the week of March 18th. This will be for all youth between ages 5-13. Cost will be \$20 per day or \$50 per week.

**Teget Foundation** awarded the City of Marathon Parks and Recreation Department a check for \$1,000 to assist in providing programs for our community. This has been an annual gift for the past few years and is greatly appreciated by the department.

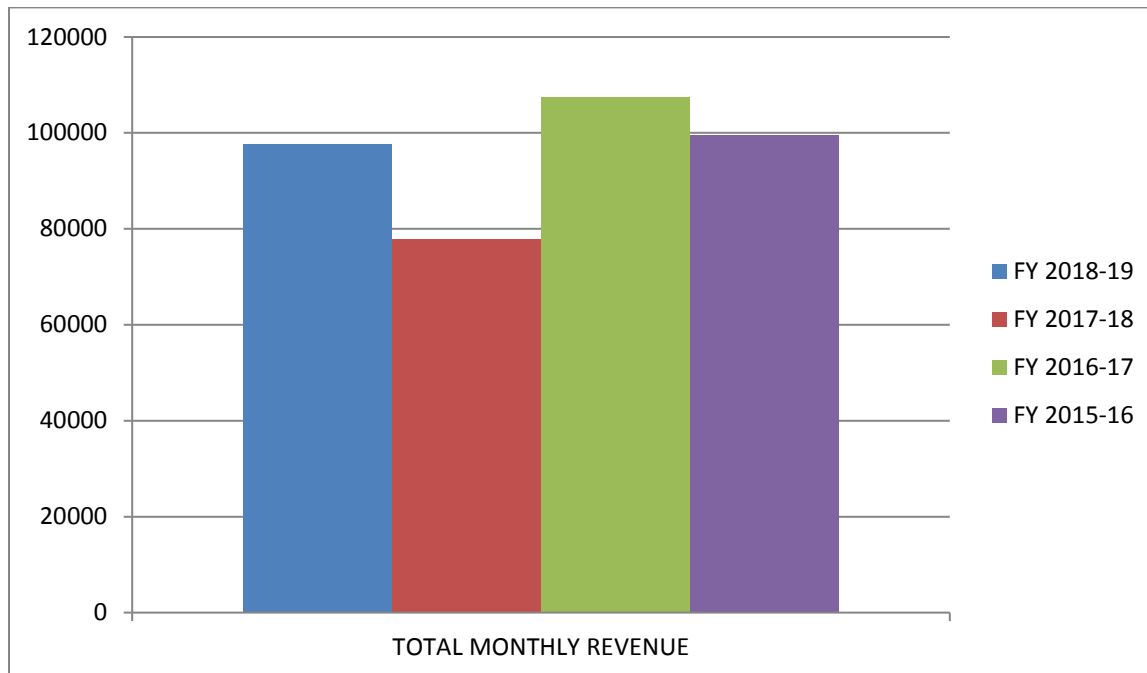
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# Memorandum

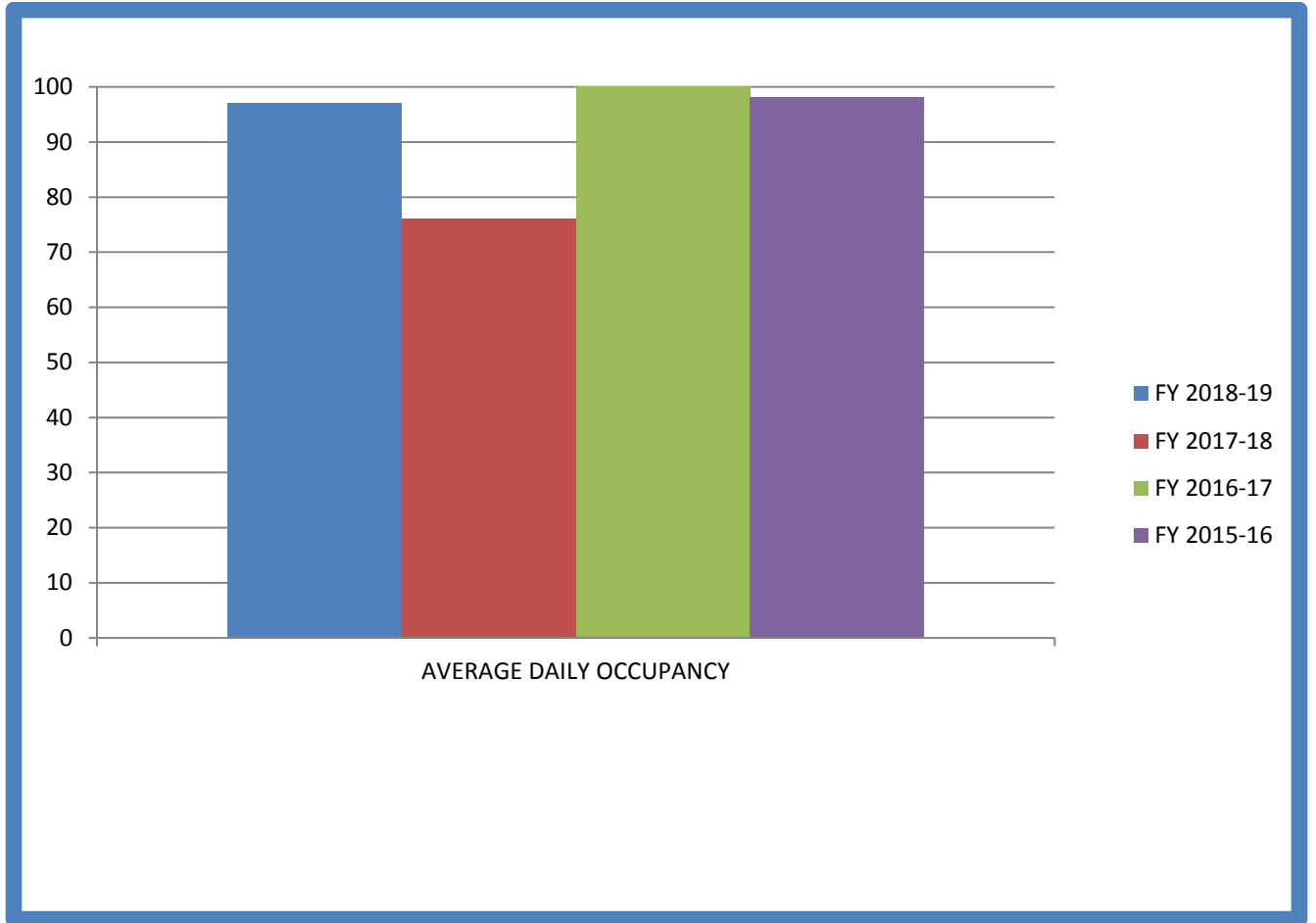
**To:** Chuck Lindsey, City Manager  
**From:** Sean Cannon, Ports Director  
**Date:** January 8, 2019  
**Re:** December Monthly Report

Revenue: City Marina saw \$97,773 in total revenue during the month of December.



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Occupancy: December's average daily occupancy was 97%.



**TOTAL TRANSIENT ARRIVALS**

**\*IN-STATE VESSELS: 47**

**\*OUT-OF-STATE VESSELS: 40**

**\*FOREIGN VESSELS: 16**

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Derelict Vessels: There were no derelict vessels tagged in December. Officer Guerra of MCSO, who would normally be working in Boot Key Harbor, has been pulled away to road duties while the department is short-staffed. The FL FWC has taken up processing the derelict vessels in the interim.

News: The mooring field reached 100% occupancy this month and the marina is now using a waiting list. The cruisers held a harbor clean-up day around mid-December and removed a lot of debris from the waters and mangroves. Marina technician Roel Alvarado is the proud new father of a baby girl!

Projects: The outer dinghy dock replacement is still in process for environmental permitting, and the inner dock / office plans are still being drawn up. The old boat lift that was damaged in Irma is scheduled to be replaced soon, and permitting is in the works.



## COUNCIL AGENDA STATEMENT

**Meeting Date:** January 8, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Planning Director

**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of A Request By James and Karen Ruggio For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, Seeking Authorization For The Construction Of A Boat Ramp At The Property Located At 111 Santa Barbara, Nearest Mile Marker 50, Which Is Legally Described As Bk 1, LT 70 Amended Plat of Flamingo Island Estates, Boot Key, Section 15, Township 66, Range 32, Monroe County, Florida, Having Real Estate Number 00356140-000000.

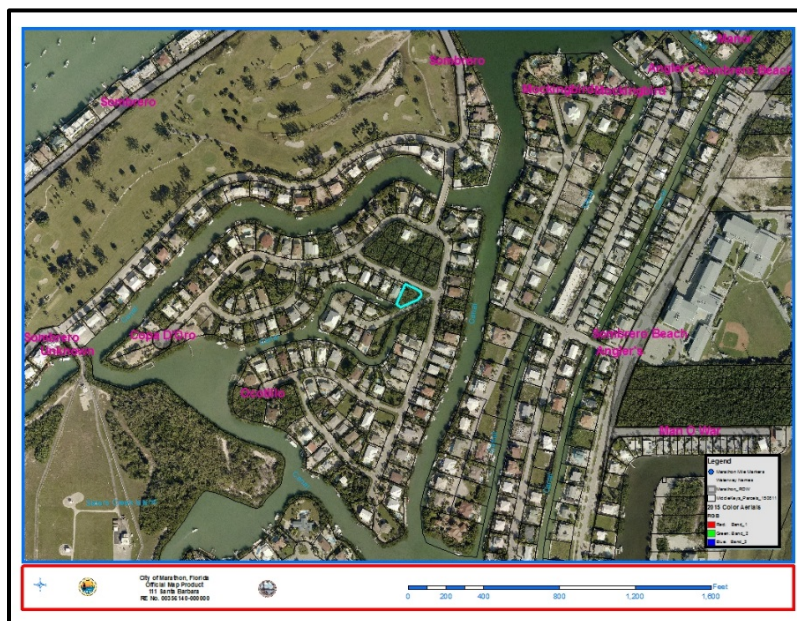
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**APPLICANT/ OWNER:** James and Karen Ruggio

**AGENT:** Marathon Seawalls and Docks

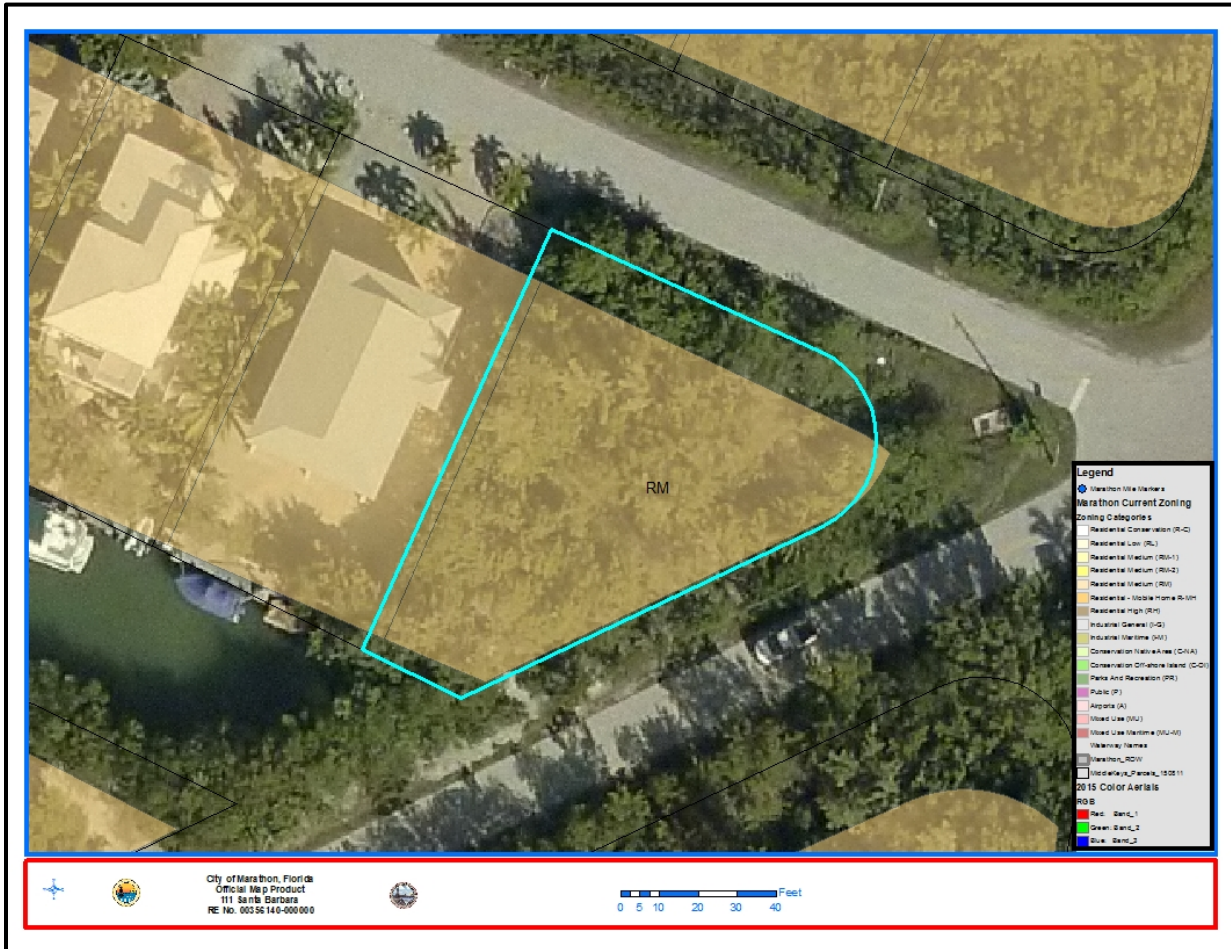
**LOCATION:** The project is located at 111 Santa Barbara at approximately mile marker 50.

**Figure 1**  
**Project Site**



**ZONING MAP DESIGNATION:**  
Residential Medium (RM). See Figure 3.

**Figure 2**  
**Zoning Map**



**LOT SIZE:**

Total acreage 0.21 acres or 9,342 square feet.

**SURROUNDING ZONING AND USES:**

	<i>Zoning</i>	<i>Use</i>
North	Residential Medium, Public Recreation, Residential High, and Mixed Use	Flamingo Estates, Sombrero Country Club, Dockside/Marina, Condos along Sombrero Blvd.
East	Residential Medium, Residential High, Public, and Conservation Native Area	Tropic Isle subdivision, Sombrero Angler's Club North, Ibis Isle, MTH Middle/High
South	Residential Medium, Public, and Residential High	Sombrero Isle Subdivision, Sisters Creek Island, Waloriss Subdivision
West	Residential Medium, Public Recreation, and Residential High	Sombrero County Club, Sombrero Properties Subdivision

**EXISTING CONDITIONS:**

The project site consists of a previously vacant land. Currently being developed as a single family residence (BPAS).

**PROPOSED REDEVELOPMENT:**

Boat ramp on Residential Medium (RM) zone.

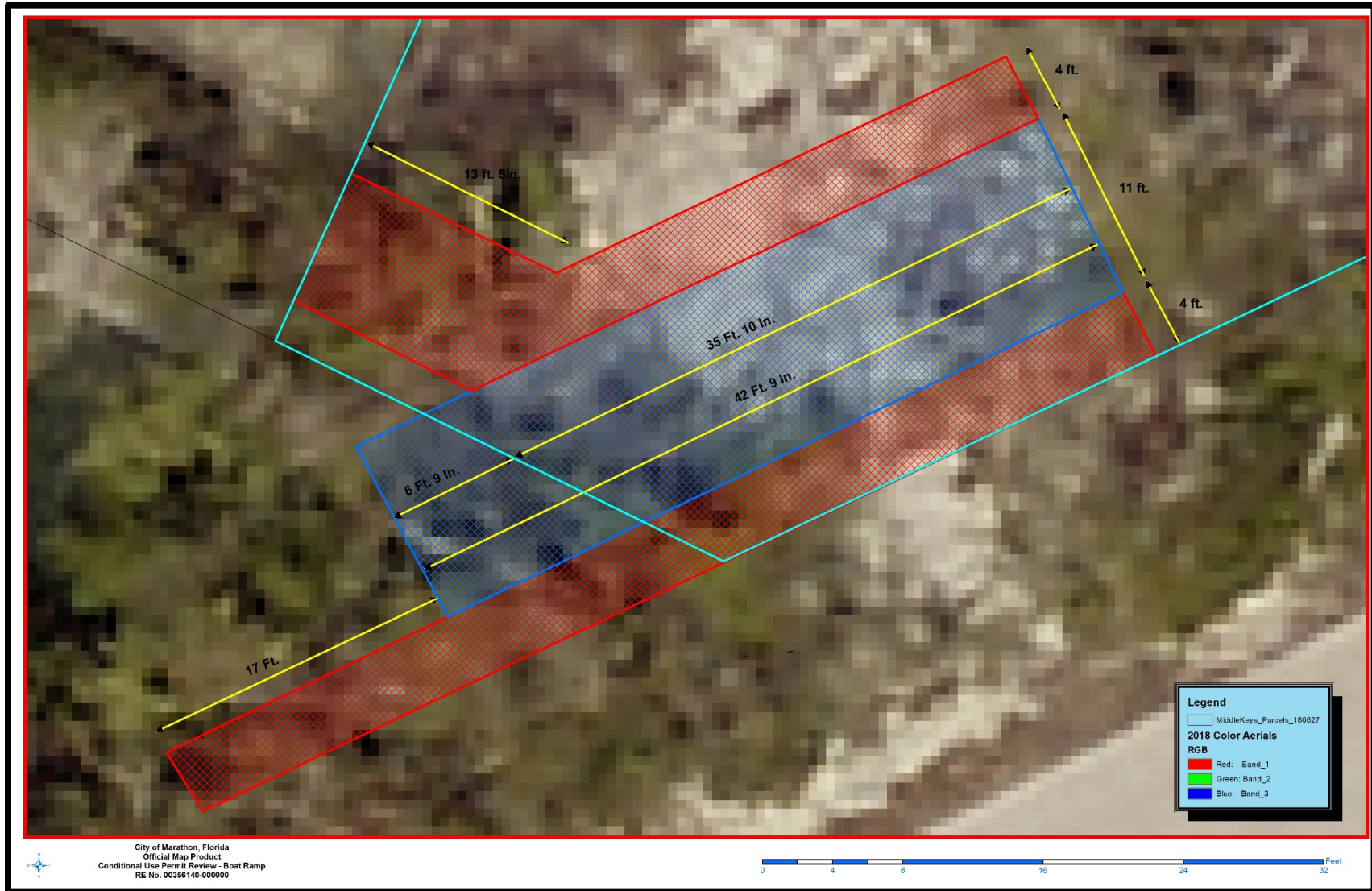
**See Figure 3 for Site Plan layout.**



**Figure 3B**  
**Proposed Redevelopment Site Plan**



**Figure 3C**  
**Proposed Redevelopment Site Plan**



## **BACKGROUND:**

The proposed project is construction of a boat ramp and dock on property located in a subdivision zoned Residential Medium (RM). Boat ramps are only allowed on residential zoned properties through a Conditional Use Permit review and approval. Pursuant to Article 13, Section 102.71, the Director determines the proposed use is substantially similar to permitted or conditional use in this particular zoning district. Therefore, a positive review from the Planning Director and a Conditional Use Permit approval are required for project approval. This report addresses the Conditional Use application only.

The access to water on the property in question is limited. The width of the property at the water is approximately thirty feet. In addition, the property lies on the corner of the terminal end of the canal it is associated with.

A boat ramp is not essential to allow the maintenance dredging approved by the FDEP and ACOE at the end of the canal the in question. Maintenance dredging is required in order to provide access to the water at this particular property. This will require the removal of some mangroves. In addition to the requested boat ramp, the Applicant was requested the approval of a dock of approximately seventeen (17) feet in length. A dock of this length will not adequately provide for a boat of lengths greater than approximately twenty (20) feet. Thus, the request for a boat ramp in tandem with the dock will allow the applicant to generally keep their boat on land and to use the dock more typically as a temporary mooring platform.

Finally, the allowance of a boat ramp at this site will remove a limited amount of impact on local boat ramps such as 33<sup>rd</sup> Street, Harbor Drive, or the Quay boat ramp.

The Planning Commission recommended denial based on a desire for more information. They did not specifically provide a basis for denial showing reason why this project DOES NOT meet the requirements of the LDRs for a Conditional Use Permit. The Planning Commission questioned whether the ramp and particularly the proposed dock would lie on City Right-Of-Way. The Planning Commission was also concerned about required removal of the adjacent mangroves should the project be approved.

In response to these questions and concerns: First, no part of the project, as proposed will lie on City Right-Of-Way. The dock, not the boat ramp, will lie adjacent to City Right-of-Way line, but will lie approximately twenty (20) feet from the edge of pavement. Second, the Applicant has a right to Riparian Access, so long as that is reasonably possible. Third, the Applicant's Agent, Sean Kirwin and City Planning staff believe that the combination of a dock with a boat ramp provides the best means of providing access to the water in this instance. And Fourth, the dock could be approved as a "Permit As Of Right" and it is actually the dock, aside for the required dredging, that will have the greatest impact to the adjacent mangroves in the area. The State actually has exclusive authority to regulate the trimming and or removal of mangroves within navigable waters of the State. The City does have the authority to limit mangrove removal on its property (the ROW). And, the City does have additional authority when the mangroves are located in a forest setting, to prohibit any removal of mangroves. In this instance, the Applicant already has all State and federal approvals for the project as proposed.

**All conditions of the Conditional Use approval will have to be met before any building permit will be approved.**

## **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;**

The proposed development project is located within the Residential Medium (RM) Zoning District. Per Chapter 103, Article 2, Section 103.12 of the Land Development Regulations, the district is designed to “establish areas of low- to medium-density residential uses characterized principally by single-family detached and two-family dwellings, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM)”

The proposed project consists of the construction of a boat ramp within the Residential Medium (RM) Zoning District. Section 103.15 determines whether specific uses are allowed as of right, limited, accessory or conditional uses, through Table 103.15.1. That table shows that a boat ramp is not an allowed use, however pursuant to Article 13, Section 102.71, the Planning Director determines the proposed use is substantially similar to permitted or conditional use in this particular zoning district and may apply for a Conditional Use. The Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Therefore, it is staff’s opinion that the request is *in compliance* with the requirements of these sections so long as the applicant obtains a Development Agreement and approval of Conditional Use.

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

The proposed project is located within the Residential Medium (RM) Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Residential Medium future land category is to provide for medium density residential development. The Residential Medium future land use category is characterized by areas containing predominately compact development on lots with disturbed or scarified vegetation and areas that are appropriate for infill development and that are served by existing infrastructure”. The proposed project includes the development of an existing Residential Medium (RM) district into the same conditional use, which is consistent with the Residential Medium (RM) classification.



The existing land use pattern in the project vicinity consists of residential uses the north, south, east and west. Otherwise, the development of a boat ramp on the property site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. Existing marine uses along the shoreline will be maintained. 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.

- Top of ramp/drain to intercept stormwater
- Small swale needed to collect stormwater runoff

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

The proposed conditional use does not adversely affect the health, and welfare of the public. The impacts on surrounding properties as a result of the proposed development should be positive.

Plans submitted with the project are suitable for the Conditional Use Approval as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance. (See Figure 4.

Therefore, it is staff's opinion that the request is *in compliance* with the requirements of these sections, so long as the applicant complies with stormwater requirements.

**Figure 4  
FEMA FIRM Maps**



Further improvements to water quality are expected to arise from stormwater improvements to the site, which should provide up-to-date treatment and eliminate any existing discharges to surface waters. The applicant has submitted preliminary stormwater plans suitable for the Conditional Use Application, and final plans are required prior to building permit issuance.

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Therefore, it is staff's opinion that the request is ***in compliance*** with the requirements of these sections so long as the development is conditioned on the approval from Army Corp of Engineers and Department of Environmental Protection, plans are subject to approval of the City Biologist and final stormwater plans are subject to City approval.

- 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.
- Native vegetation shall remain intact, except for the minimum area required for the boat ramp. According to the vegetative survey, native plants of size are not located within wetlands and open space shall be maintained for the wetland areas.



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

Parking requirements are outlined in Section 107.46 (Table 107.46.1, Parking Schedule). The following table shows the parking requirement for the residential uses on the parcel:

Use	Code Citation	Requirement	Spaces Required
Single and Two-Family, attached and detached	107.46	2 per dwelling unit	2
<b>Total Required</b>		<b>2</b>	<b>2</b>
<b>Total Provided</b>		<b>2</b>	<b>2</b>

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;**

The proposed project consists of development of a boat ramp on a residential zone. 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 this section.

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

Property receives individual service though Marathon Garbage Services (MGS).

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

**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:

- Wastewater: The applicant must coordinate with wastewater Utilities department for connection requirements. This project will constitute a major expansion, resulting in a de minimus impact.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service (MGS) will provide solid waste disposal.

- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This development will have a de minimus impact on recreation and open space.
- Roadways: The applicant is developing the site with a higher intensity than was contained within the undeveloped vacant land; however, the residential boat ramp shall not impose any additional impact to traffic other than that of the single family residential use (SFR).
- Educational Facilities: This redevelopment will have a de minimus impact on educational facilities since existing uses are replaced in-kind.

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.
- Detail grading plan depicting existing and proposed elevations. All runoff is required to be diverted to the stormwater system with no off-site discharge.
- 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;**

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The project is zoned Residential Medium (RM). The property is bordered by parcels of similar zone as Residential Medium (RM) and therefore neither requires buffers.

Table 103.15.2 outlines setback requirements in the RM district as follow: front yard 20'; side yard 5, interior side yard 5'; and rear 20'. For a principal structure on a manmade canal on a lawfully altered shoreline, the setback is 20'; accessory structures, including pools, have a 10' setback from Mean High Water Line (MHWL).

The site plan meets the navigational and structural requirements for a boat ramp.

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

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

No exterior sign or lighting is proposed for this use; therefore the proposed use will have no ill effect in regards to glare, traffic safety, and compatibility with surrounding uses.

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

**8. Required yards and other open space;**

Section 106.16 established required open space for the project. The site is disturbed; therefore, a twenty percent open space requirement applies. According to calculations provided by the applicant, 5,919 square feet of pervious area (including landscape area), or 63% of the site, is provided as open space. This exceeds the open space requirement.

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 project of construction of a boat ramp is similar to other residential boat ramps in Marathon. Adjacent uses include residential neighborhoods, and adjacent waterway. Two residential boat ramps are located near to the proposed project location. The first is on Calle de Luna in the Flamingo Island Subdivision and the other is located on Sombrero Blvd. in the Sombrero Properties Subdivision. Construction of the boat ramp is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development, and is expected to increase compatibility with surrounding properties.

Section 104.07 restricts the width of boat ramps, including side slopes to 35'. The site plans shows the boat ramp is below 35' wide.

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

- Boat ramp shall be limited to the use of property owners.
- Boat ramp shall not to be used as a public ramp.

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

Section 104.07 Boat Ramps contains special requirements.

The following criteria are applicable to this project:

- All boat ramps shall be located and designed so as not to create setback nonconformity for existing structures from the new mean high water line (MHWL) created by the boat ramp and all new structures permitted subsequent to boat ramp approval must meet the new setback from MHWL.
- All boat ramps shall be confined to shorelines of man-made canals, channels, and basins with little or no native vegetation and shall be located in the least vegetated area of the shoreline.
- The width of boat ramps, including side slopes, shall be limited to 35 feet. As proposed, the Applicant's ramp shall not exceed 11 feet in width.
- A maximum of two accessory docks meeting all docking facility requirements may be allowed.
- Boat ramps without accessory docks must meet the water depth and access criteria for a dock within ten (10) feet of the waterward end of the ramp to allow for a bottom slope.
- If necessary, a conservation easement will be required for the preservation of the wetland

area and surrounding native vegetation.

- Dredging and filling shall be limited to the minimum amount necessary to construct the boat ramp surface, side slopes, walls and mooring or dock pilings.
- All such projects shall require approval by the Florida Department of Environmental Protection or the South Florida Water Management District and by the U.S. Army Corps of Engineers prior to issuance of a City permit.

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

## **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 consists of construction of a boat ramp for residential use. 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 Commission recommended denial of the residential boat ramp for James and Karen Ruggio based on a desire for more information. They did not specifically provide a basis for denial showing a reason why this project DOES NOT meet the requirements of the LDRs for a Conditional Use Permit. The Planning Department continues to recommend approval of the proposed boat ramp and dock based on our responses to the Planning Commissions concerns. The Recommendation from the Planning Department comes with the following proposed conditions of approval.

### Conditions of Approval

1. Detail grading plan depicting existing and proposed elevations for the proposed residence. All runoff is required to be diverted to the stormwater system with no off-site discharge.
2. City approval is required for the stormwater management system prior to Building Permit Approval.
3. Boat ramp shall be limited to the use of property owners and tenants.
4. Boat ramp shall not to be used as a public ramp.
5. All boat ramps shall be located and designed so as not to create setback nonconformity for existing structures from the new mean high water line (MHWL) created by the boat ramp

and all new structures permitted subsequent to boat ramp approval must meet the new setback from MHWL.

6. All boat ramps shall be confined to shorelines of man-made canals, channels, and basins with little or no native vegetation and shall be located in the least vegetated area of the shoreline.
7. The width of boat ramps, including side slopes, shall be limited to 35 feet. As proposed, the Applicant's ramp shall not exceed 11 feet in width.
8. A maximum of two accessory docks meeting all docking facility requirements may be allowed.
9. Boat ramps without accessory docks must meet the water depth and access criteria for a dock within ten (10) feet of the waterward end of the ramp to allow for a bottom slope.
10. Dredging and filling shall be limited to the minimum amount necessary to construct the boat ramp surface, side slopes, walls and mooring or dock pilings.
11. 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.
12. Native vegetation shall remain intact, except for the minimum area required for the boat ramp and, in this case the docks as approved by FDEP and the ACOE.
13. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.



**Attachments:  
Proposed Site Plan For  
Dock & Boat Ramp**





# Permit

Number: \_\_\_\_\_

Conversion services provided by:

**MICROGRAPHICS**

*The Information and Image Managers*

1925-A NW Second Street

Gainesville, FL 32609

Phone: (352) 372-6039 - Fax: (352) 378-6039

On-line: [www.micrographicsinc.com](http://www.micrographicsinc.com)

# DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Gary Tedesco  
14 York Street  
Kennebunk, ME 04043-7172

**Permit No:** SAJ-2009-03717 (SP-MIB)

**Issuing Office: U.S. Army Engineer District, Jacksonville**

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The project is to place 310 cubic yards of fill within a 8,358 square foot area (7,975 square foot wetland area within the platted lot lines) for the construction of a single-family residence with associated amenities, to place 4 cubic yards of fill within a 56 square foot red mangrove shoreline to construct a 14 linear foot riprap revetment, to place 22 cubic yards for fill within a 664 square foot area for the construction of a concrete marginal dock, a finger pier and boat ramp totaling 944 square foot (334 sq. ft. waterward of the mean high waterline), to excavate 27 cubic yards of wetlands for the construction of a 364 square foot boat ramp, to dredge 37 cubic yards of red mangroves and submerged bottom within a 502 square foot area to minus 5 feet mean low water, to install a 7,000 lb capacity elevator boatlift and to install temporary floating turbidity barriers around all work areas that are in/over U.S. navigable waters. Dredged material to be placed onsite and contained with a silt fence during dewatering. The work described above is to be completed in accordance with the 7 pages of drawings [and 7 attachments] affixed at the end of this permit instrument.

**Project Location:** The project would affect waters of the United States associated with the Atlantic Ocean. The project site is located at 111 Santa Barbara on an undeveloped wetland lot adjacent to a canal in Section 15, Township 66 South, Range 32 East, Marathon, Monroe County, Florida (MM 50). RE#00356140-000000.

**Directions to site:** Take U.S. 1 South to MM50; Turn left onto Sombrero Beach Road; Right onto Sombrero Boulevard; Merge left onto Sombrero Boulevard; Left onto Copa D'Oro; Right onto West Copa D'Oro; Turn left onto Santa Barbara; Project located at 111 Santa Barbara.

**Latitude & Longitude:** Latitude 24.70338  
Longitude -81.08303

PERMIT NUMBER: SAJ-2009-03717 (SP-MIB)

PERMITTEE: Tedesco, Gary

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### **Permit Conditions**

#### **General Conditions:**

APR 29 2018

1. The time limit for completing the work authorized ends on \_\_\_\_\_.  
If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

#### **Special Conditions:**

1. All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, 9900 SW 107<sup>th</sup> Avenue, Suite 203, Miami, FL 33176. The Permittee shall reference this permit number, SAJ-2009-03717 (SP-MIB), on all submittals.

PERMIT NUMBER: SAJ-2009-03717 (SP-MIB)

PERMITTEE: Tedesco, Gary

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2. Should any other regulatory agency require changes to the work authorized or obligated by this permit, the Permittee is advised that a modification to this permit instrument is required prior to initiation of those changes. It is the Permittee's responsibility to request a modification of this permit from the Miami Regulatory Office.

3. Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas adjacent to wetlands to prevent the displacement of fill material outside the work area. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work has been completed and the site has been stabilized.

4. Within 60 days of completion of the authorized work or at the expiration of the construction authorization of this permit, whichever occurs first, the Permittee shall complete the attached "Self-Certification Statement of Compliance" form (Attached) and submit to the Corps. In the event that the completed work deviates, in any manner, from the authorized work, the Permittee shall describe, on the Self-Certification Form, the deviations between the work authorized by the permit and the work as constructed. Please note that the description of any deviations on the Self-Certification Form does not constitute approval of any deviations by the Corps.

5. Within 10 days from the date of initiating the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of work authorized by this permit.

6. The Permittee shall complete and record the Notice of Department of the Army Permit (Attached) with the Clerk of the Circuit Court, Registrar of Deeds or other appropriate official charged with the responsibility of maintaining records of title to or interest in real property within the county of the authorized activity. Within 90 days from the effective date of this permit the Permittee shall provide a copy of the recorded Notice of Permit to the Corps clearly showing a stamp from the appropriate official indicating the book and page at which the Notice of Permit is recorded and the date of recording.

7. The permittee shall ensure that no fill, clean or otherwise, storage of construction materials, equipment, or debris shall be placed outside the footprint of the authorized fill.

8. The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

PERMIT NUMBER: SAJ-2009-03717 (SP-MIB)  
PERMITTEE: Tedesco, Gary  
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9. The Permittee shall comply with the “Standard Protection Measures for the Eastern Indigo Snake– 2004” attached to this permit.

10. The deadline for submitting compensatory mitigation to the Keys Environmental Restoration Fund (KERF) is July 9, 2013. Therefore, upon initiation of the authorized work or no later than July 9, 2013, whichever first occurs, the Permittee shall submit \$24,424.71 to the Keys Environmental Restoration Fund. Payments must be mailed to Audubon Florida, c/o Emoy Suarez, State Finance Director, 444 Brickell Avenue, Suite 850, Miami, Florida 33131, for the acquisition, enhancement, preservation and management of wetland resources within Monroe County. Checks or money orders must be made payable to Keys Environmental Restoration Fund (KERF). The Department of the Army (DA) permit number shall be written on the check or money order. The Permittee shall provide written verification to the Corps’ Enforcement Section, at 9900 SW 107th Ave, #203, Miami, FL 33176, that the \$24,424.71 payment has been received by the KERF. If the compensatory mitigation as required by the DA permit is not met on or before July 9, 2013, the Permittee shall submit to the Corps an alternate mitigation statement and/or plan that offsets this project’s impacts and satisfies the Federal Mitigation Rule. Commencement of the authorized work will be contingent upon Corps’ approval of the new mitigation submittal.

11. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

12. The Permittee must comply with National Marine Fisheries Service’s “Sea Turtles and Smalltooth Sawfish Construction Conditions” dated March 23, 2006, attached to this permit.

13. The Permittee agrees to abide by the enclosed standard construction conditions designed to protect the endangered West Indian manatee.

14. Prior to the initiation of any of the work authorized by this permit the Permittee shall install floating turbidity barriers with weighted skirts that extend to within 1 foot of the bottom around all work areas that are in, or adjacent to, surface waters. The turbidity barriers shall remain in place and be maintained until the authorized work has been completed and all erodible materials have been stabilized.

PERMIT NUMBER: SAJ-2009-03717 (SP-MIB)  
PERMITTEE: Tedesco, Gary  
PAGE 5 of 10

15. The Permittee shall ensure that all contractors, sub-contractors, and entities associated with the implementation of the project review, understand, and comply with the approved plans and special conditions made part of this permit. The Permittee shall inform all parties associated with the activity of the construction area boundaries, and the location of adjacent wetland area to be avoided. Complete copies of the permit and approved plans shall be available at the construction site at all times. Failure to comply with the approved plans and permit special conditions may subject the Permittee to enforcement action.

16. Dredging shall be performed from land. Filter fencing shall be installed to contain the spoil material during dewatering. The dried spoil material will be stored on the subject site until dredging is complete. The dredging material will be used on site or transported to a certified landfill for disposal if not suitable to be used as fill material.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899  
(33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

PERMIT NUMBER: SAJ-2009-03717 (SP-MIB)  
PERMITTEE: Tedesco, Gary  
PAGE 6 of 10

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.



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6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.





PERMIT NUMBER: SAJ-2009-03717 (SP-MIB)  
PERMITTEE: Tedesco, Gary  
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***Attachments to Department of the Army  
Permit Number SAJ-2009-03717 (SP-MIB)***

1. PERMIT DRAWINGS: 7 pages, date-stamped by the Corps on 18 March 2013.
2. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit. 5 pages.
3. U.S. FISH & WILDLIFE SERVICE: Standard Manatee Conditions for In-Water Work – 2011. 2 pages.
4. NATIONAL MARINE FISHERIES SERVICE: Sea Turtle and Smalltooth Sawfish Construction Conditions dated March 2006. 1 page.
5. U.S. FISH & WILDLIFE SERVICE: Standard Protection Measures for the Eastern Indigo Snake – 2004. 1 page.
6. SELF-CERTIFICATION STATEMENT OF COMPLIANCE: 1 page.
7. NOTICE OF DEPARTMENT OF THE ARMY PERMIT. 2 pages.
8. KEYMIG Worksheet. 1 page

**PROJECT SITE**  
 LOT 70, BLOCK 1, FLAMINGO ISLAN ESTATES  
 PLAT BOOK 5 PAGE 121  
**BOOT KEY**  
 SECTION 15, TOWNSHIP 66 SOUTH, RANGE 32 EAST  
 LATITUDE: 24 42' 12.88" LONGITUDE: 81 04' 58.25"  
**DIRECTIONS**  
 US HIGHWAY NO 1 SOUTH TO MM 50+/-, LEFT ONTO  
 SOMBRERO BEACH ROAD, RIGHT ONTO SOMBRERO  
 BOULEVARD, LEFT ONTO SOMBRERO BOULEVARD,  
 LEFT ONTO COPA D'ORO, RIGHT ONTO WEST COPA D'ORO,  
 LEFT ONTO SANTA BARBARA, PROJECT SITE ADDRESS:  
 111 SANTA BARBARA.

**ADJOINING OWNERS**  
 RANDALL E MARX  
 PO BOX 7252  
 TAHOE CITY, CA 96145  
 (LOT 71)

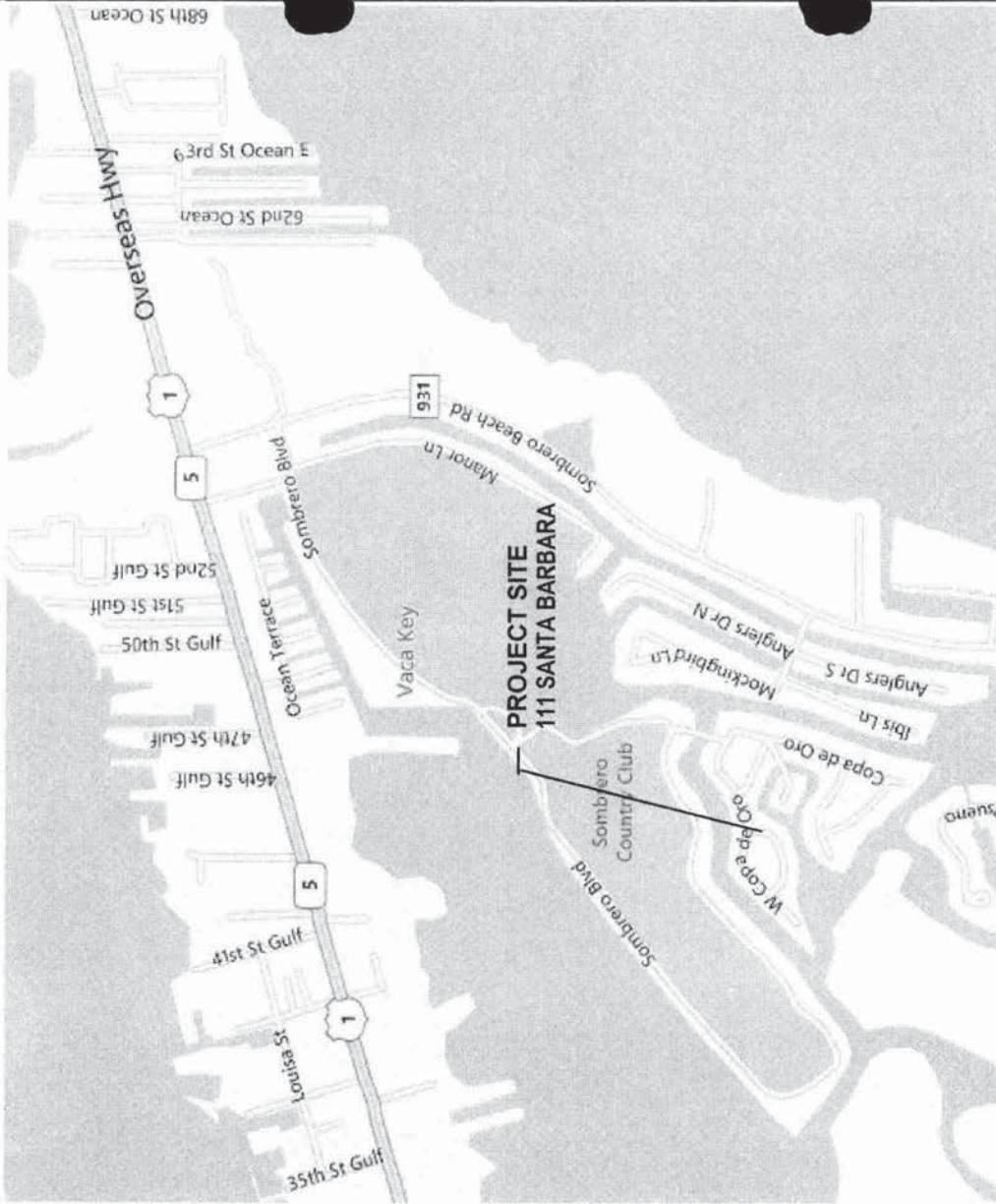
CITY OF MARATHON PUBLIC WORKS DEAPRTMENT  
 9805 OVERSEAS HIGHWAY  
 MARATHON, FL 33050  
 (SOUTHERLY ADJOINER)

US ARMY  
 CORPS OF ENGINEERS

MAR 18 2013 1 of 7

MIAMI REGULATORY OFFICE

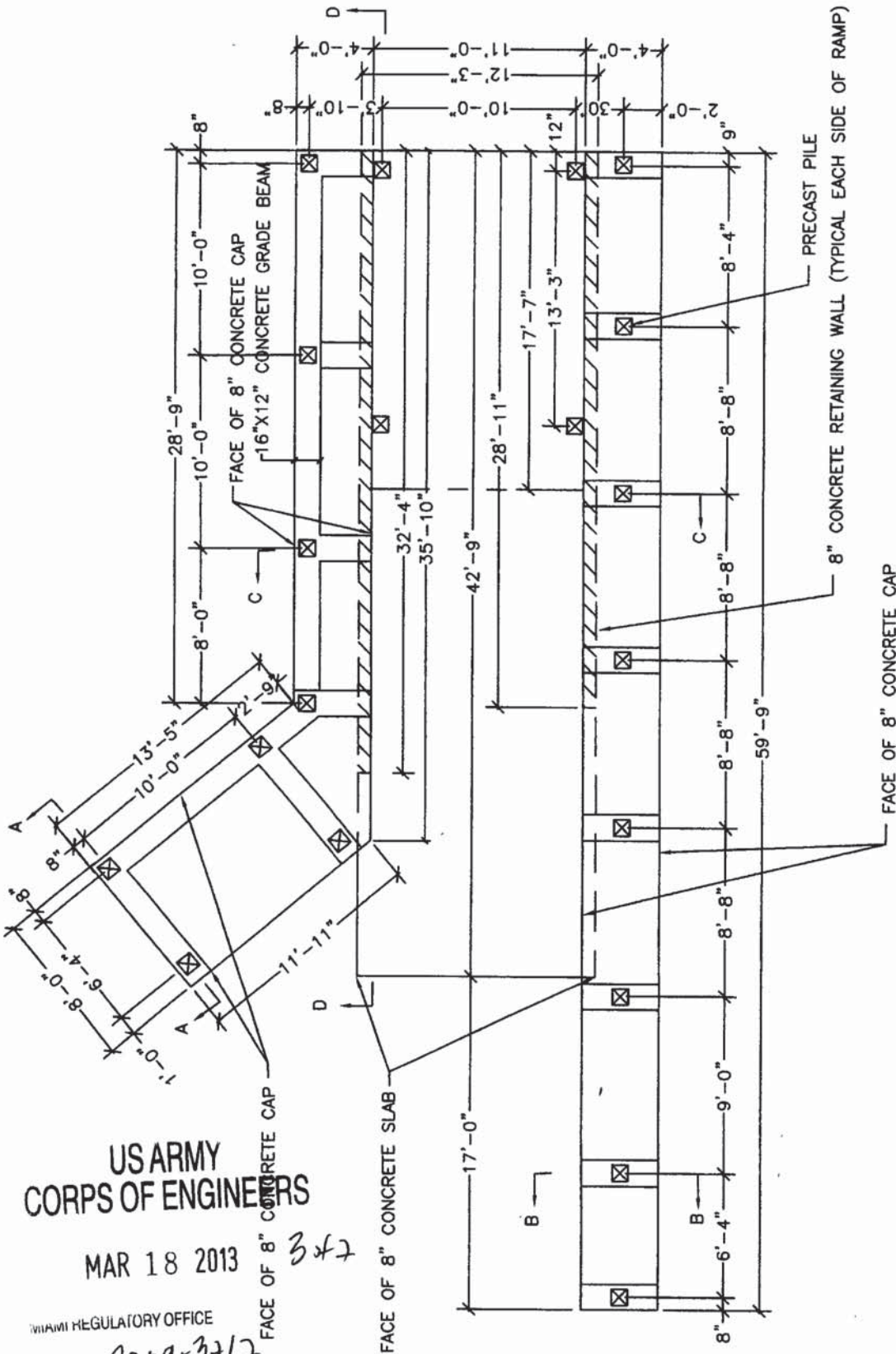
COE #: 2019-3717  
 PROJECT MANAGER: MB



LOCATION & VICINITY MAP

DATE: 09/05/12	1	GLEN BOE & ASSOCIATES, INC #4061 5800 OVERSEAS HIGHWAY, SUITE 4 MARATHON, FL 33050 TEL: (305) 743-9121 FAX: (305) 743-9197	FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT FOR GARY TEDESCO FLAMINGO ISLAND, MONROE COUNTY, FL	CERTIFIED BY: SEAN KIRWAN, PE #57506	REVISIONS:
SHEET 1 OF 7					





**FOUNDATION PLAN**

SCALE: 1/8" = 1'-0"

REVISIONS	
1	11/27/12

CERTIFIED BY  
SEAN KIRWAN, PE #57506

**FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
FOR GARY TEDESCO  
FLAMINGO ISLAND, MONROE COUNTY, FL**

**GLEN BOE & ASSOCIATES, INC #4061  
5800 OVERSEAS HIGHWAY, SUITE 4  
MARATHON, FL 33050  
TEL: (305) 743-9121 FAX: (305) 743-9197**

DATE: 09/05/12  
3  
SHEET 3 OF 7

**US ARMY  
CORPS OF ENGINEERS**

MAR 18 2013

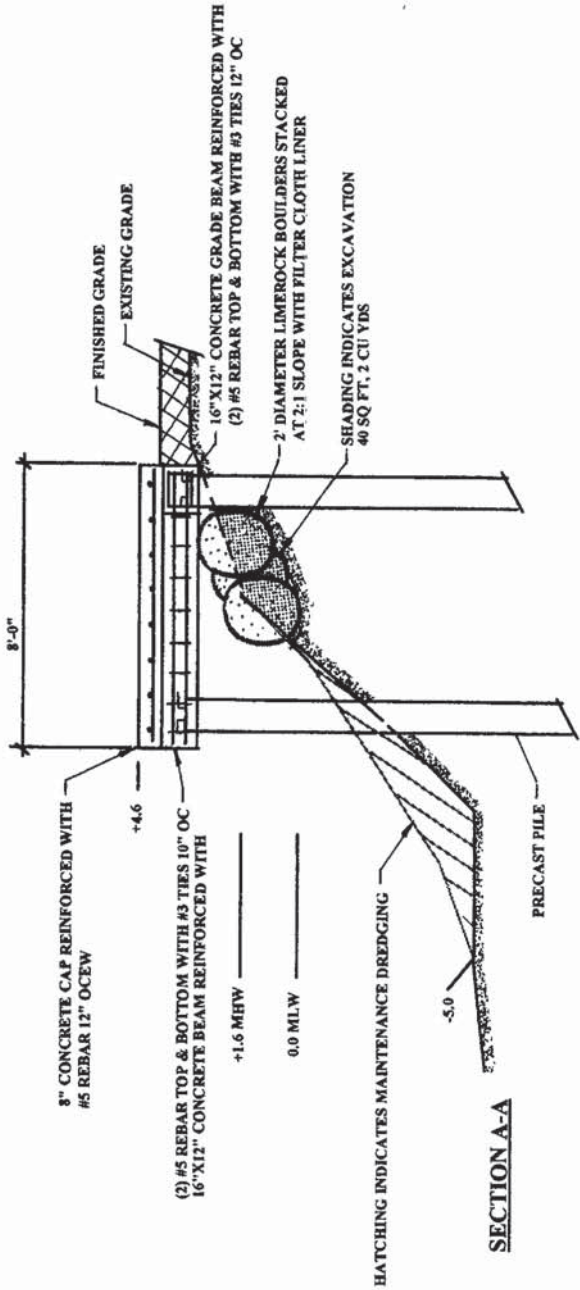
MIAMI REGULATORY OFFICE

COE #: *1009-3717*  
PROJECT MANAGER: *MIB*

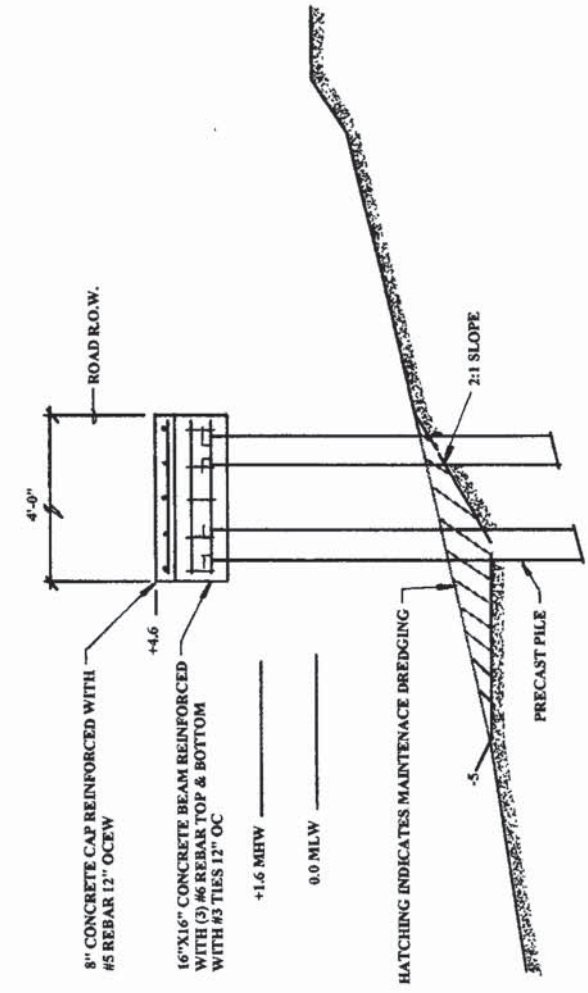
FACE OF 8" CONCRETE CAP *3x2*

**SECTION A & B**  
SCALE: 3/16" = 1'-0"

REVISIONS:	
1	10/30/12
2	11/27/12



**SECTION A-A**



**SECTION B-B**

**US ARMY  
CORPS OF ENGINEERS**

MAR 18 2013 4 of 7

MIAMI REGULATORY OFFICE

COE #: 2009-3717  
PROJECT MANAGER: MIO

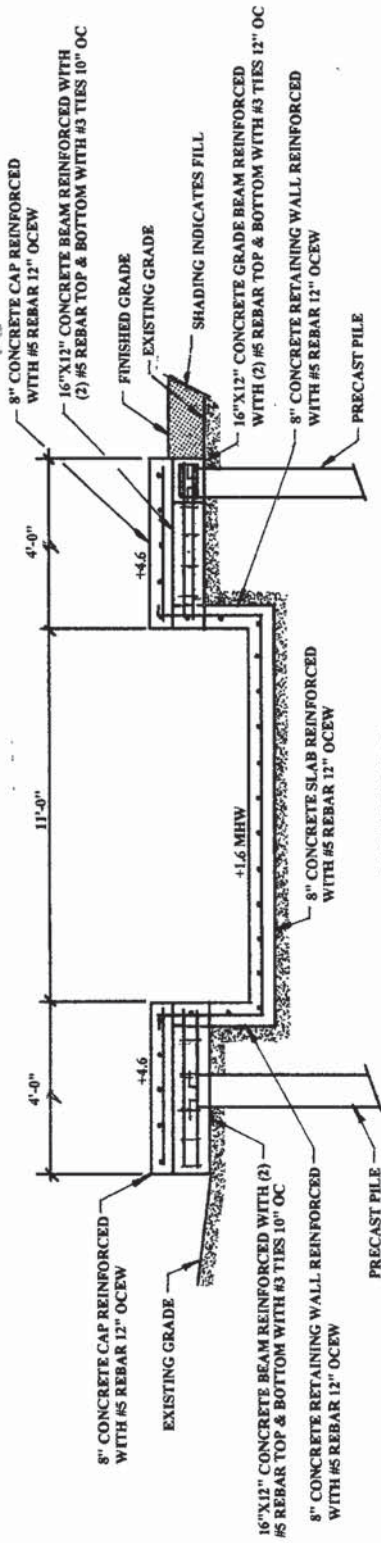
**FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
FOR GARY TEDESCO  
FLAMINGO ISLAND, MONROE COUNTY, FL**

CERTIFIED BY:  
SEAN KIRWAN, PE #57506

**GLEN BOE & ASSOCIATES, INC #4061**  
5800 OVERSEAS HIGHWAY, SUITE 4  
MARATHON, FL 33050  
TEL: (305) 743-9121 FAX: (305) 743-9197

DATE: 09/05/12	4
SHEET 4 OF 7	





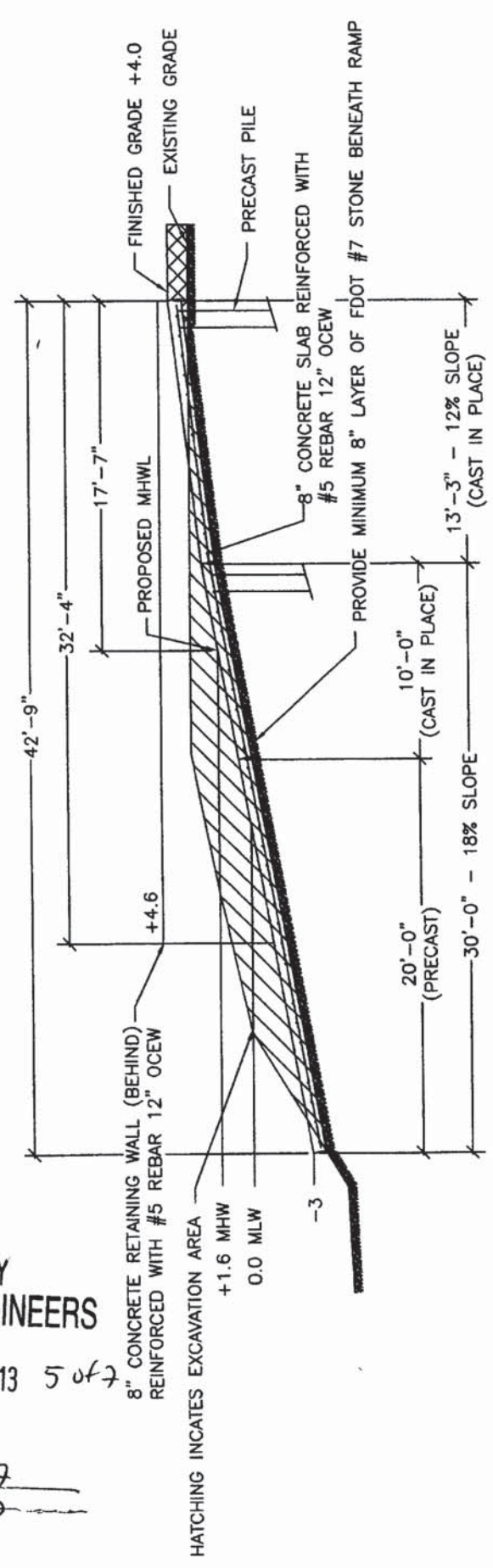
**SECTION C-C**  
SCALE: 3/16" = 1'-0"

**US ARMY  
CORPS OF ENGINEERS**

MAR 18 2013 5 of 7

REGULATORY OFFICE

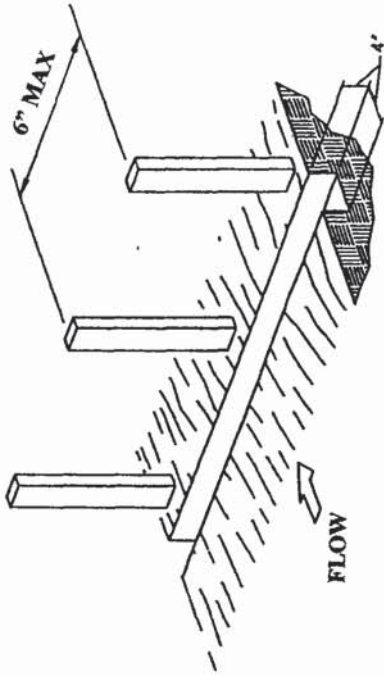
COE #: 2009-3717  
PROJECT MANAGER: [Signature]



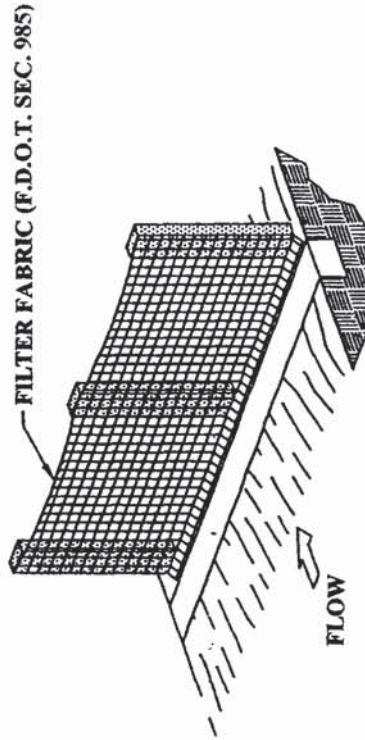
**SECTION D-D**  
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**SECTION C & D**

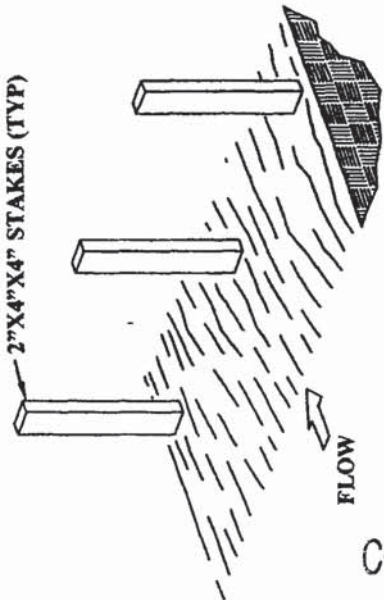
DATE: 09/05/12	REVISIONS:
<b>5</b>	1 11/27/12
<b>FILL FOR RESIDENCE, DOCK, PIER, RAMP &amp; BOAT LIFT FOR GARY TEDESCO FLAMINGO ISLAND, MONROE COUNTY, FL</b>	
GLEN BOE & ASSOCIATES, INC #4061 5800 OVERSEAS HIGHWAY, SUITE 4 MARATHON, FL 33050 TEL: (305) 743-9121 FAX: (305) 743-9197	
CERTIFIED BY: SEAN KIRWAN, PE #57506	
SHEET 5 OF 7	



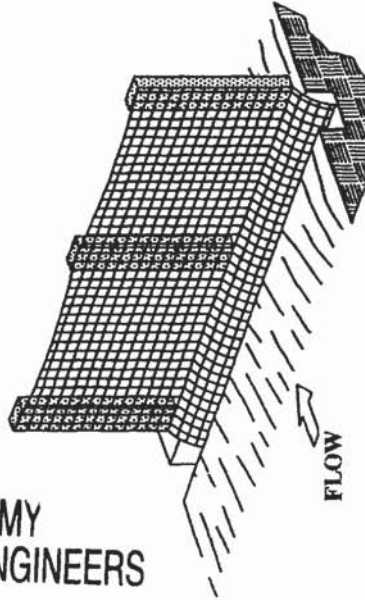
2. EXCAVATE A 4" X 4" TRENCH UPSLOPE ALONG THE LINE OF STAKES



4. BACKFILL AND COMPACT THE EXCAVATED SOIL



1. SET THE STAKES



3. STAPLE FILTER MATERIAL TO STAKES AND EXTEND IT INTO TRENCH

US ARMY  
CORPS OF ENGINEERS

MAR 18 2013 6 of 7

WAWI REGULATORY OFFICE

COE #: 2009-3717  
PROJECT MANAGER: M/S

F.D.O.T. FILTER FENCE DETAIL

DATE 09/05/12	REVISIONS:	FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT FOR GARY TEDESCO FLAMINGO ISLAND, MONROE COUNTY, FL	CERTIFIED BY SEAN KIRWAN, PE #57506
	6		
SHEET 6 OF 7			

**GENERAL NOTES:**

- 1 CONTRACTOR SHALL OBTAIN ALL APPLICABLE PERMITS PRIOR TO COMMENCING WORK THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE ARMY CORPS OF ENGINEERS & LOCAL REGULATIONS SHALL GOVERN ALL WORK
- 2 WORK SHOWN ON DRAWINGS IS DESIGNED IN ACCORDANCE WITH THE FLORIDA BUILDING CODE (LATEST EDITION) FOLLOW ALL APPLICABLE PROVISIONS FOR ALL PHASES OF CONSTRUCTION
- 3 THE PROPOSED STRUCTURE(S) IS DESIGNED FOR A LIVE LOAD OF 40 PSF WIND LOADS ARE DESIGNED PER THE FLORIDA BUILDING CODE
- 4 CONTRACTOR SHALL ADHERE TO THE STANDARD MANATEE CONSTRUCTION CONDITIONS (LATEST EDITION) IF NEEDED, THE CONTRACTOR CAN CONTACT THE ARMY CORPS OF ENGINEERS OR THIS OFFICE TO OBTAIN A COPY OF THE STANDARD MANATEE CONSTRUCTION CONDITIONS
- 5 BEST MANAGEMENT PRACTICES, INCLUDING THE USE OF TURBIDITY SCREENS, ARE REQUIRED TO ISOLATE THE CONSTRUCTION AREA FROM THE ADJACENT WATERS CONTRACTOR SHALL INSTALL TURBIDITY SCREENS AROUND THE IMMEDIATE PROJECT AREA PRIOR TO CONSTRUCTION THE TURBIDITY SCREENS REMAIN IN PLACE UNTIL WATER QUALITY CONDITIONS RETURN TO PRECONSTRUCTION CONDITIONS. WATER QUALITY MONITORING SHALL ADHERE TO STATE REGULATIONS
- 6 ELECTRIC & WATER (DESIGN PROVIDED BY OTHERS UNLESS SHOWN) SHALL BE PROVIDED CONTRACTOR SHALL COORDINATE FINAL LOCATION OF ALL PROPOSED UTILITIES WITH OWNER PRIOR TO CONSTRUCTION.
- 7 CONTRACTOR SHALL FIELD VERIFY DIMENSIONS & WATER DEPTHS PRIOR TO CONSTRUCTION ANY DISCREPANCIES ON THE DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE COMMENCING WORK
- 8 THE STRUCTURAL INTEGRITY OF THE COMPLETED STRUCTURE DEPENDS ON INTERACTION OF VARIOUS CONNECTED COMPONENTS. PROVIDE ADEQUATE BRACING, SHORING, AND OTHER TEMPORARY SUPPORTS AS REQUIRED TO SAFELY COMPLETE THE WORK
9. EXERCISE EXTREME CARE AND CAUTION WHEN EXCAVATING AND FILLING ADJACENT TO EXISTING STRUCTURES UNDER NO CIRCUMSTANCES SHALL THE STRUCTURAL INTEGRITY OF THE EXISTING STRUCTURES BE IMPAIRED IN ANY WAY BY CONSTRUCTION OPERATIONS AND PROCEDURES DO NOT EXCAVATE OR DISTURB SOIL ADJACENT TO OR BENEATH EXISTING FOOTINGS
10. CONTRACTOR SHALL COORDINATE INSTALLATION OF CLEATS, LADDERS, PILE CAPS, AND OTHER DOCK ACCESSORIES WITH OWNER PRIOR TO CONSTRUCTION ALL DOCK ACCESSORIES SHALL BE INSTALLED PER MANUFACTURER'S SPECIFICATIONS STAINLESS STEEL HARDWARE SHALL BE USED FOR ALL CONNECTIONS TO DOCK PROVIDE A MINIMUM OF 3" CLEARANCE FROM EDGE OF STRUCTURE TO EDGE OF BOLTS

**CONCRETE PILES:**

10"x10" PRESTRESSED CONCRETE PILES W/ FOUR 7#16" DIAMETER 270K STRANDS @ 21,700# INITIAL PULL (EACH) W/ W3.4 WIRE SPIRAL TIES. MINIMUM COMPRESSIVE STRENGTH AT 28 DAYS SHALL BE 5000 PSI CONCRETE SHALL BE FDOT CLASS V SPECIAL. ALL REINFORCING STEEL, EXCEPT SPIRAL TIES, SHALL BE ASTM A615, GRADE 60 SPIRAL TIES SHALL BE HARD DRAWN BASIC WIRE IN ACCORDANCE WITH ASTM A-82. EACH WRAP OF SPIRAL SHALL BE TIED TO AT LEAST TWO CORNER STRANDS

PILES SHALL BE SET IN PREDRILLED OR PREPUNCHED HOLES AND DRIVEN TO PENETRATE FIRM ROCK 7' MIN.

PILES SHALL BE SPACED @ MAXIMUM OF 10' O.C UNLESS OTHERWISE SHOWN

DO NOT DRIVE PILES WITHIN 20 FEET OF CONCRETE LESS THAN SEVEN DAYS OLD

RE-DRIVE ANY PILE WHICH IS RAISED DURING DRIVING OF ADJACENT PILES, TO THE ORIGINAL TIP ELEVATION

CUT OFF PILES TO PROVIDE A MINIMUM OF 5" EMBEDMENT INTO CONCRETE CAP PROVIDE A MINIMUM 30" SPLICE FOR ALL STRANDS

PILES SHALL DEVIATE FROM PLUMB AND ANGLE OF BATTER NO MORE THAN 1/4 INCH PER FOOT OF PILE LENGTH, BUT NOT MORE THAN 6 INCHES OVERALL. PILES SHALL NOT DEVIATE FROM LOCATION OF PILE TOP MORE THAN 6 INCHES.

REMOVE CUTOFF SECTIONS OF PILES FROM THE SITE AND LEGALLY DISPOSE

**CONCRETE CAP, BEAMS, RETAINING WALL & SLAB:**

CAST IN PLACE CONCRETE SHALL BE TYPE II CONCRETE WITH A COMPRESSIVE STRENGTH OF 5,000 PSI AT 28 DAYS. MAXIMUM WATER-CEMENTIOUS MATERIALS RATIO BY WEIGHT RATIO SHALL BE 0.40 SLUMP SHALL NOT EXCEED 5"(1"±)

REINFORCING BARS SHALL BE NEW BILLET STEEL CONFORMING TO ASTM A 615, GRADE 60. ALL DETAILING AND ACCESSORIES TO CONFORM TO ACI DETAILING MANUAL (LATEST EDITION)

PROVIDE 3/4" CHAMFER ON ALL EXPOSED CONCRETE EDGES.

PROVIDE LIGHT BROOM FINISH ON ALL EXPOSED CONCRETE SLABS

REINFORCED CONCRETE CONSTRUCTION TO CONFORM TO ACI 318 "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE"

PROVIDE SLEEVES FOR ALL PIPES, CONDUITS, ETC , THAT PENETRATE CONCRETE STRUCTURAL MEMBERS PRIOR TO PLACEMENT OF CONCRETE. CUTTING OR DRILLING OF HARDENED CONCRETE NOT PERMITTED

DO NOT EMBED HORIZONTAL CONDUITS, PIPES, ETC , IN HORIZONTAL CONCRETE STRUCTURAL MEMBERS UNLESS SPECIFICALLY SHOWN ON STRUCTURAL DRAWINGS

REQUIRED CONCRETE COVER FOR REINFORCING STEEL (UNLESS NOTED OTHERWISE)  
CONCRETE CAP, RETAINING WALL & SLAB - TOP 2" MINIMUM, BOTTOM 3" MINIMUM, SIDES 3" MINIMUM  
CONCRETE BEAMS - 3" ALL SIDES

PROVIDE CHAIRS, SPACERS, TIES, AND ALL DEVICES NECESSARY FOR PROPER PLACING, SPACING, SUPPORTING, AND FASTENING REINFORCEMENT AS REQUIRED BY ACI 315. PROVIDE CHAIRS, SPACERS, BOLSTERS, AND ITEMS IN CONTACT WITH FORMS WITH HOT-DIP GALVANIZED LEGS OR PLASTIC LEGS

**US ARMY  
CORPS OF ENGINEERS**

LAP SPLICE CONTINUOUS VERTICAL OR HORIZONTAL REINFORCING CONCRETE MEMBERS BY WIRING TOGETHER IN CONTACT IN ACCORDANCE WITH ACI 318, LATEST EDITION, FOR CLASS "B" TENSION. ALL SPLICES SHALL BE CONTINUOUS TOP BARS IN BEAMS AT ENDS OF CLEAR SPANS. DO NOT SPLICE CONTINUOUS BOTTOM BARS IN BEAMS IN CLEAR SPANS BETWEEN SUPPORTS

MAR 18 2013 7 of 2

FLORIDA REGULATORY OFFICE

GOE #: 2009-3717  
PROJECT MANAGER: MIB

REVISIONS

FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
FOR GARY TEDESCO  
FLAMINGO ISLAND, MONROE COUNTY, FL

GLEN BOE & ASSOCIATES, INC #4061  
5800 OVERSEAS HIGHWAY, SUITE 4  
MARATHON, FL 33050  
TEL: (305) 743-9121 FAX: (305) 743-9197

DATE 09/05/12

7

SHEET 7 OF 7

CERTIFIED BY  
SEAN KIRWAN, PE #57506



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

South District Office  
P.O. Box 2549  
Fort Myers, FL 33902-2549

RICK SCOTT  
GOVERNOR

JENNIFER CARROLL  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

**VIA ELECTRONIC MAIL**

**Permittee/Authorized Entity:**

Gary Tedesco  
14 York Street  
Kennebunk, ME 04043-7172

**Single-family residence, maintenance dredging, dock, ramp, boatlift**

**Authorized Agent:**

Glen Boe & Associates, Inc.  
5800 Overseas Highway, Suite 4  
Marathon, FL 33050  
[glenboe@bellsouth.net](mailto:glenboe@bellsouth.net)

**Environmental Resource Permit  
State-owned Submerged Lands Authorization - Granted**

**U.S. Army Corps of Engineers Authorization - Separate Corps  
Authorization Required**

Permit No.: 44-0297813-002

**Permit Issuance Date: January 29, 2013  
Permit Construction Phase Expiration Date: January 29, 2018**

## Consolidated Environmental Resource Permit and State-owned Submerged Lands Authorization

Permittee: Gary Tedesco  
Permit No: 44-0297813-002

### PROJECT LOCATION

The activities authorized by this Permit and state-owned submerged lands authorization are located at 111 Santa Barbara, Marathon in Section 15, Township 66 South, Range 32 East, Monroe County; RE#00356140-000000.

### AUTHORIZATIONS

**Single-family residence, maintenance dredging, dock, ramp, boatlift**

#### Project Description

The permittee is authorized to conduct the following activities:

- place 5,920 sq. ft. of fill within a saltmarsh wetland, and
- within a man-made canal (Class III Waterbody):
  - install a dock with an associated boatlift,
  - place 14 linear feet of riprap along the shoreline,
  - install a boat ramp with two accessory piers, and
  - conduct maintenance dredging of a 502 sq. ft. area to a maximum depth of -5 feet MLW.

Authorized activities are depicted on the attached drawings.

To offset unavoidable impacts that will occur from these authorized activities, the permittee shall purchase 0.05 credits of saltmarsh wetlands as mitigation from the Everglades Mitigation Bank.

The project described above may be conducted only in accordance with the terms, conditions and attachments contained in this permit. The issuance of this permit does not infer, nor guarantee, nor imply that future permits or modifications will be granted by the Department.

#### Sovereignty Submerged Lands Authorization

The activity is located on submerged lands owned by the State of Florida. It therefore also requires authorization, from the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 Florida Statutes (F.S.) and Chapter 258, F.S.

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

As staff to the Board of Trustees, the Department has determined that the activity qualifies for a Letter of Consent, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein.

Federal Authorization

A copy of this permit has been sent to the U.S. Army Corps of Engineers (USACE). The USACE may require a separate permit. Failure to obtain any required federal permits prior to construction could subject you to enforcement action by that agency.

Coastal Zone Management

This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

Water Quality Certification

This permit constitutes certification of compliance with state water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

Other Authorizations

You are advised that authorizations or permits for this project may be required by other federal, state or local entities including but not limited to local governments and homeowner's associations. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

In addition, you are advised that your project may require additional authorizations or permits from the municipality/county in which the project is located. Please be sure to contact the local county building and environmental department to obtain these required authorizations.

**PERMIT/SOVEREIGNTY SUBMERGED LANDS CONDITIONS**

The activities described herein must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The General Consent Conditions for Sovereignty Submerged Lands Authorization**
- **The limits, conditions and locations of work shown in the attached drawings**
- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these conditions and drawings prior to commencing the authorized activities. Failure to comply with these conditions, including any mitigation requirements, shall constitute grounds for revocation of the Permit and appropriate enforcement action by the Department.

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

Operation of the facility is not authorized except when determined to be in conformance with all applicable rules and this permit/certification/authorization andsovereignty submerged lands authorization, as specifically described above.

**SPECIFIC CONDITIONS:**

1. All submittals of information required by this permit shall be submitted to the Department's Marathon office at 2796 Overseas Highway, Suite 221, Marathon, Florida 33050.
2. **Prior to construction**, the Permittee shall purchase 0.05 saltmarsh wetland credits from the Everglades Mitigation Bank. To submit payment, please contact Joseph Sicbaldi, Bank Manager, at 700 Universe Boulevard, Juno Beach, FL 33408; (561) 694-6388; Joseph.Sicbaldi@fpl.com. **Within 10 days of payment**, the Permittee shall provide the Department verification that the credits have been purchased.
3. **Prior to construction**, the Permittee shall provide a severed dredge fee totaling \$102.25 (\$3.25/cu. yd. x 37 cu. yds), pursuant in Rule 18-21.011(3)(a)1., F.A.C. Please make checks payable to the Florida Department of Environmental Protection, and reference Permit No. 44-0297813-002 on the memo of the check.
4. If prehistoric or historical artifacts, such as pottery or ceramics, stone tools or metal implements, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
5. Best management practices for erosion control shall be implemented and maintained at all times to prevent siltation and turbid discharges in excess of State Water Quality Standards, pursuant to Rule 62-302, F.A.C. All practices shall be in accordance with the guidelines and specifications described in the Florida Erosion and Sedimentation Control Inspector's Manual, FDEP (2008), available on the Department's website at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>. Methods shall include, but are not limited to the immediate placement of turbidity containment devices such as turbidity screens, silt containment

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

fences, and earthen berms, etc., to contain any potential erosion or turbidity. Earthen berms shall not impact wetlands or other surface waters as defined by Rule 62-340, F.A.C. Following the completion of construction, the Permittee shall be responsible for the removal of the turbidity barriers and shall correct any erosion or shoaling that has the potential to cause adverse impacts to wetlands or surface waters.

6. A filter cloth underliner for the riprap shall be staked in place before installation of the riprap material.
7. The riprap shall consist only of natural boulders or clean concrete rubble, free of sediments, tar, metal rebar, and other deleterious materials.
8. The slope of the riprap shall be no steeper than 2' horizontal : 1' vertical.
9. The size of the riprap material shall be between 1' to 3' in diameter on average, and the waterward layer of riprap shall be between 2' to 3' in diameter.
10. All slopes shall be stabilized within 72 hours of achieving final grade.
11. The project shall comply with applicable State Water Quality Standards of Chapter 62-302, F.A.C., namely:
  - 62-302.500 - Minimum Criteria for All Waters at All Times and All Places
  - 62-302.530 - Surface Water Quality Criteria
12. In the event discrepancies exist between the permit drawings and the Specific Conditions of this permit, the Specific Conditions shall prevail.

#### **GENERAL CONDITIONS:**

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and a violation of Part IV of Chapter 373, (F.S.).
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by the Department staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violations of



state water quality standards. Temporary erosion control shall be implemented prior to and during construction and permanent control measures shall be completed within seven (7) days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving water-body exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter Six of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter, the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

4. The permittee shall notify the Department of the anticipated construction start date within thirty (30) days of the date that this permit is issued. **At least forty-eight (48) hours prior** to commencement of the activity authorized by this permit, the permittee shall submit to the Department an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), Florida Administrative Code (F.A.C.)) indicating the actual start date and expected completion date.

5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), F.A.C.). Status Report Forms shall be submitted the following June of each year.

6. **Within thirty (30) days after completion of construction** of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law utilizing the supplied "Environmental Resource Permit As-Built Certification by a Registered Professional" (Form No. 62-343.900(5), F.A.C.). The Statement of completion and certification shall be based on on-site observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the Department that the system is ready for inspection. Additionally, if deviations from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations note. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor.

7. The operation phase of this permit shall not become effective; until the permittee has complied with the requirements of condition number six (6) above, has **submitted a**

**“Request for Transfer of Environmental Resource Permit Construction Phase to Operation Phase” (Form 62-343.900(7), F.A.C.);** the Department determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the Department in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District – August 1995, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the Department, the permittee shall initiate transfer of permit to the approved responsible operation entity if different from the permittee. Until the permit is transferred pursuant to Rule 62-343.110(1) (d), F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.

9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the Department along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District – August 1995, prior to lot or unit sales or prior to lot or unit sales or prior to the completion of the system, whichever occurs first. Other documents concerning the establishment and authority of the operation entity must be filed with the Secretary of State where appropriate. For those systems which are proposed to be maintained by the county or municipal entities, final operation and maintenance documents must be received by the Department when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.

10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.

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Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C.

12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorization from the Board of Trustees prior to commencing activity on sovereignty lands or other state owned lands.

13. The permittee is advised that the rules of the South Florida Water Management District require the permittee to obtain a water use permit from the South Florida Water management District prior to construction dewatering, unless the work qualifies for a general permit pursuant to Rule 40E-20.302(4), F.A.C., also known as the "No Notice" rule.

14. The permittee shall hold and save the Department harmless from any and all damages, claims or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by this permit.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Section 373.421(2). F.S., provides otherwise.

16. The permittee shall notify the Department in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rule 62-343.130, F.A.C. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.

17. Upon reasonable notice to the permittee, Department authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate Department office.

19. The permittee shall immediately notify the Department in writing of and previously submitted information that is later discovered to be inaccurate.

#### **GENERAL CONDITIONS FOR SOVEREIGNTY SUBMERGED LANDS AUTHORIZATION**

Any use of sovereignty submerged lands is subject to the following general conditions are binding upon the permittee and are enforceable under Chapter 253, F.S., and, as applicable, Chapter 258, F.S.:

1. Sovereignty submerged lands may be used only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use will constitute a violation. Violation of the authorization shall result in suspension or revocation of the permittee's use of the sovereignty submerged land unless cured to the satisfaction of the Board of Trustees.

2. Authorization under Rule 18-21.005, F.A.C., convey no title to sovereignty submerged land or water column, nor does it constitute recognition or acknowledgment of any other person's title to such land or water.

3. Authorizations under Rule 18-21.005, F.A.C., may be modified, suspended or revoked in accordance with its terms or the remedies provided in Sections 253.04, F.S., and Chapter 18-14, F.A.C.

4. Structures or activities will be constructed and used to avoid or minimize adverse impacts to resources.

5. Construction, use, or operation of the structure or activity will not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.

6. Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity will be modified in accordance with the court's decision.

7. Structures or activities will not create a navigational hazard.

8. Structures will be maintained in a functional condition and will be repaired or removed if they become dilapidated to such an extent that they are no longer functional.

9. Structures or activities will be constructed, operated, and maintained solely for water dependent purposes.

10. The permittee agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the permittee's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.

11. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.

12. Permittee binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the permittee or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the permittee or its successors or assigns. Upon receipt of such notice, the permittee or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.

13. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the permittee. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The permittee will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.

14. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

## **NOTICE OF RIGHTS**

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice.

#### Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action; and
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the permittee at the address indicated above at the time of filing.

#### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the permittee must be filed with 14 days of receipt of this written notice. Petitions filed

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
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Permit Expiration: January 29, 2018

by any persons other than the permittee, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition with 14 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

#### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### Mediation

Mediation is not available in this proceeding.

#### FLAWAC Review

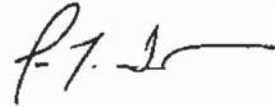
The permittee, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

#### Judicial Review

Any party to this action has the right to seek judicial review pursuant to section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed with 30 days from the date this action is filed with the Clerk of the Department.

Executed in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Jon M. Iglehart  
District Director  
South District Office

JMI/ch

**Attachments:**

Project Drawings, 7 pages  
Commencement notice /62-343.900(3)\*  
Annual status report/62-343.900(4)\*  
As-built certification/62-343.900(5)\*  
Inspection certification/62-343.900(6)\*  
Transfer construction to operation phase/ 62-343.900(7)\*  
Application for transfer of an ERP permit/62-343.900(8)\*  
\*Can be downloaded at: <http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>

**Copies furnished to:**

U.S. Army Corps of Engineers, Miami Joseph Sicbaldi, FPL Everglades Mitigation Fund manager  
(Joseph.Sicbaldi@fpl.com)  
Monroe County Property Appraiser (electronically)  
Florida Department of Historical Resources

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this permit and authorization to use sovereignty submerged lands, including all copies, were mailed before the close of business on January 29, 2013, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the  
Florida Statutes, with the designated Department Clerk,  
receipt of which is hereby acknowledged.



January 29, 2013

Clerk

Date

Permittee: Gary Tedesco  
Permit No: 44-0297813-002  
Page 13 of 13

Permit Expiration: January 29, 2018



**PROJECT SITE**  
 LOT 70, BLOCK 1, FLAMINGO ISLAN ESTATES  
 PLAT BOOK 5 PAGE 121  
 BOOT KEY

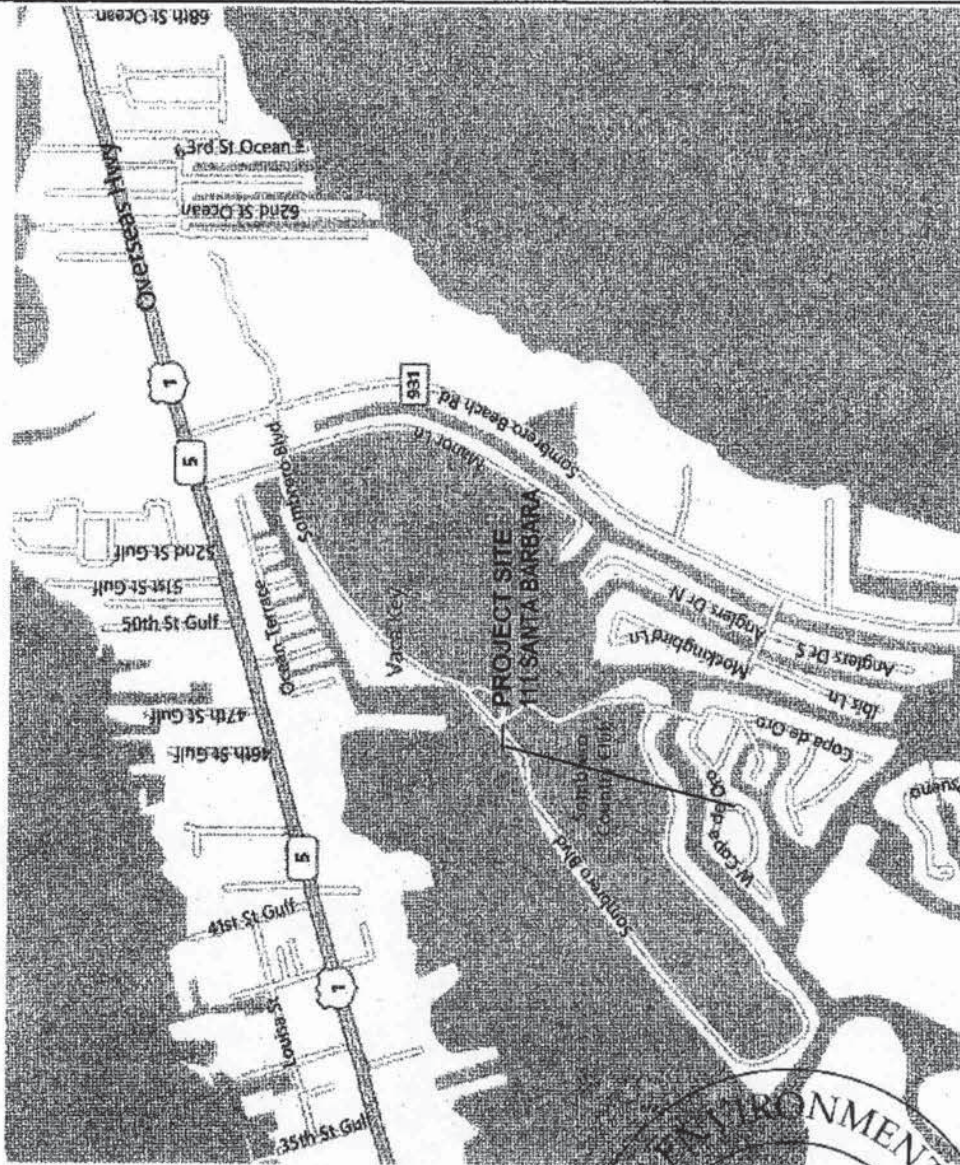
SECTION 15, TOWNSHIP 66 SOUTH, RANGE 32 EAST  
 LATITUDE: 24 42' 12.88" LONGITUDE: 81 04' 58.25"

**DIRECTIONS**

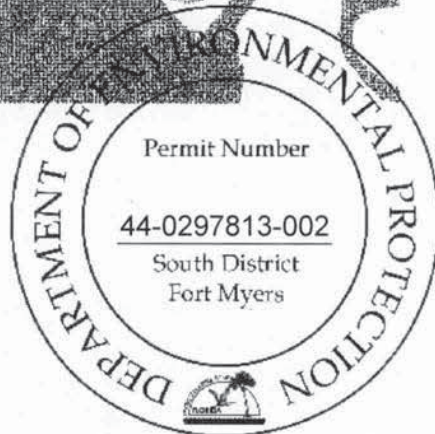
US HIGHWAY NO 1 SOUTH TO MM 50+/-, LEFT ONTO  
 SOMBRERO BEACH ROAD, RIGHT ONTO SOMBRERO  
 BOULEVARD, LEFT ONTO SOMBRERO BOULEVARD,  
 LEFT ONTO COPA D'ORO, RIGHT ONTO WEST COPA D'ORO,  
 LEFT ONTO SANTA BARBARA. PROJECT SITE ADDRESS:  
 111 SANTA BARBARA.

**ADJOINING OWNERS**  
 RANDALL E MARX  
 PO BOX 7252  
 TAHOE CITY, CA 96145  
 (LOT 71)

**CITY OF MARATHON PUBLIC WORKS DEAPRTMENT**  
 9805 OVERSEAS HIGHWAY  
 MARATHON, FL 33050  
 (SOUTHERLY ADJOINER)



**LOCATION & VICINITY MAP**



**REVISED**  
**RECEIVED**  
 OCT 31 2012  
 D.E.P. Marathon

DATE: 09/05/12	1	SHEET 1 OF 7	GLEN BOE & ASSOCIATES, INC #4061 5800 OVERSEAS HIGHWAY, SUITE 4 MARATHON, FL 33050 TEL: (305) 743-9121 FAX: (305) 743-9197	FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT FOR GARY TEDESCO FLAMINGO ISLAND, MONROE COUNTY, FL	REVISIONS:
					CERTIFIED BY: SEAN KIRWAN, PE #57506

**SCOPE OF WORK**

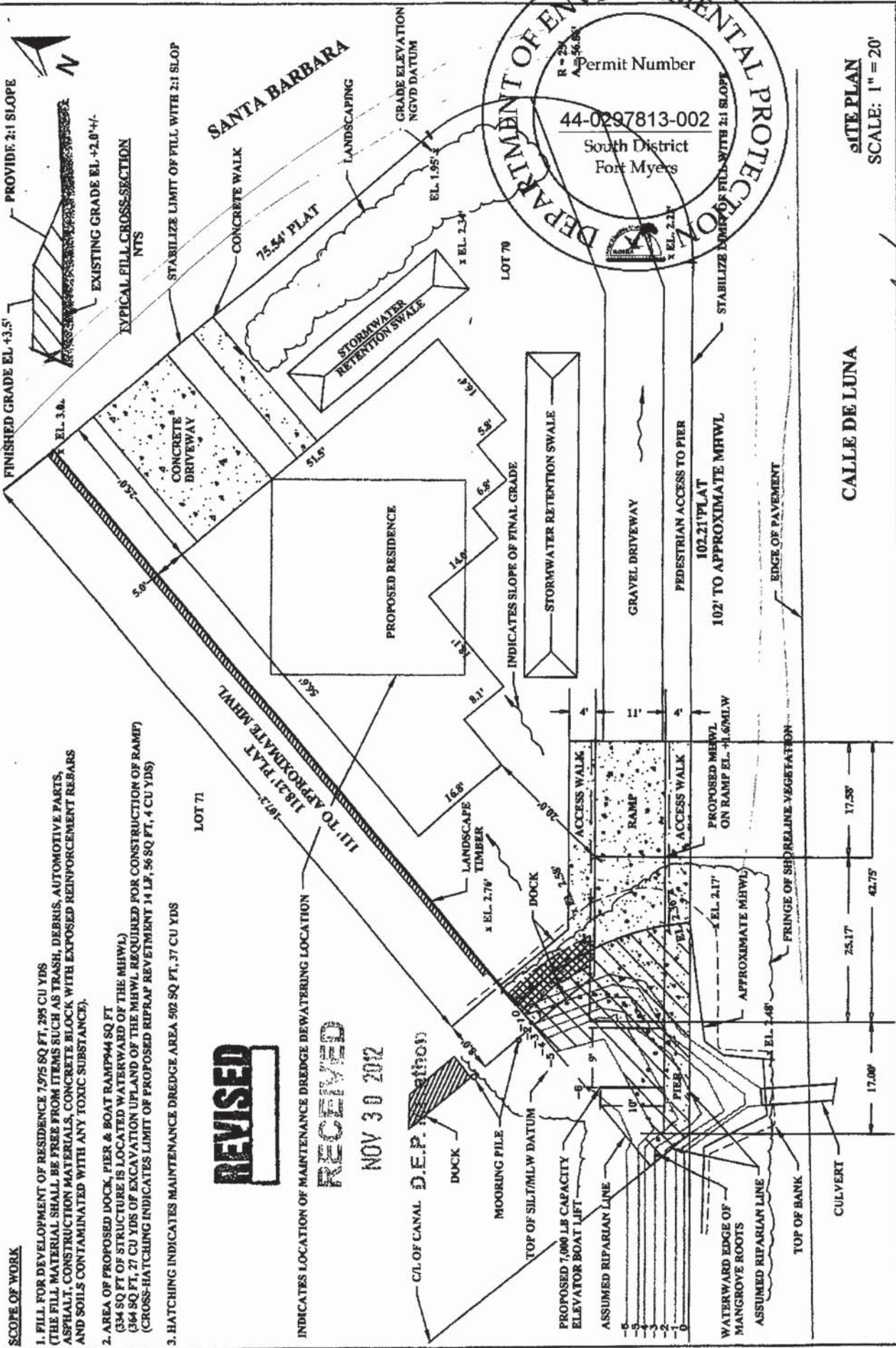
1. FILL FOR DEVELOPMENT OF RESIDENCE 7,975 SQ FT, 295 CU YDS  
(THE FILL MATERIAL SHALL BE FREE FROM ITEMS SUCH AS TRASH, DEBRIS, AUTOMOTIVE PARTS, ASPHALT, CONSTRUCTION MATERIALS, CONCRETE BLOCK WITH EXPOSED REINFORCEMENT REBARS AND SOILS CONTAMINATED WITH ANY TOXIC SUBSTANCE).
2. AREA OF PROPOSED DOCK, PIER & BOAT RAMPS 44 SQ FT  
(354 SQ FT OF STRUCTURE IS LOCATED WATERWARD OF THE MHWL)  
(364 SQ FT, 27 CU YDS OF EXCAVATION UPLAND OF THE MHWL REQUIRED FOR CONSTRUCTION OF RAMP)  
(CROSS-HATCHING INDICATES LIMIT OF PROPOSED REPAIR REVETMENT 14 LF, 56 SQ FT, 4 CU YDS)
3. HATCHING INDICATES MAINTENANCE DREDGE AREA 502 SQ FT, 37 CU YDS

**REVISED**

**RECEIVED**

NOV 30 2012

D.E.P. Method



DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 Permit Number  
 44-0297813-002  
 South District  
 Fort Myers

**SITE PLAN**  
 SCALE: 1" = 20'

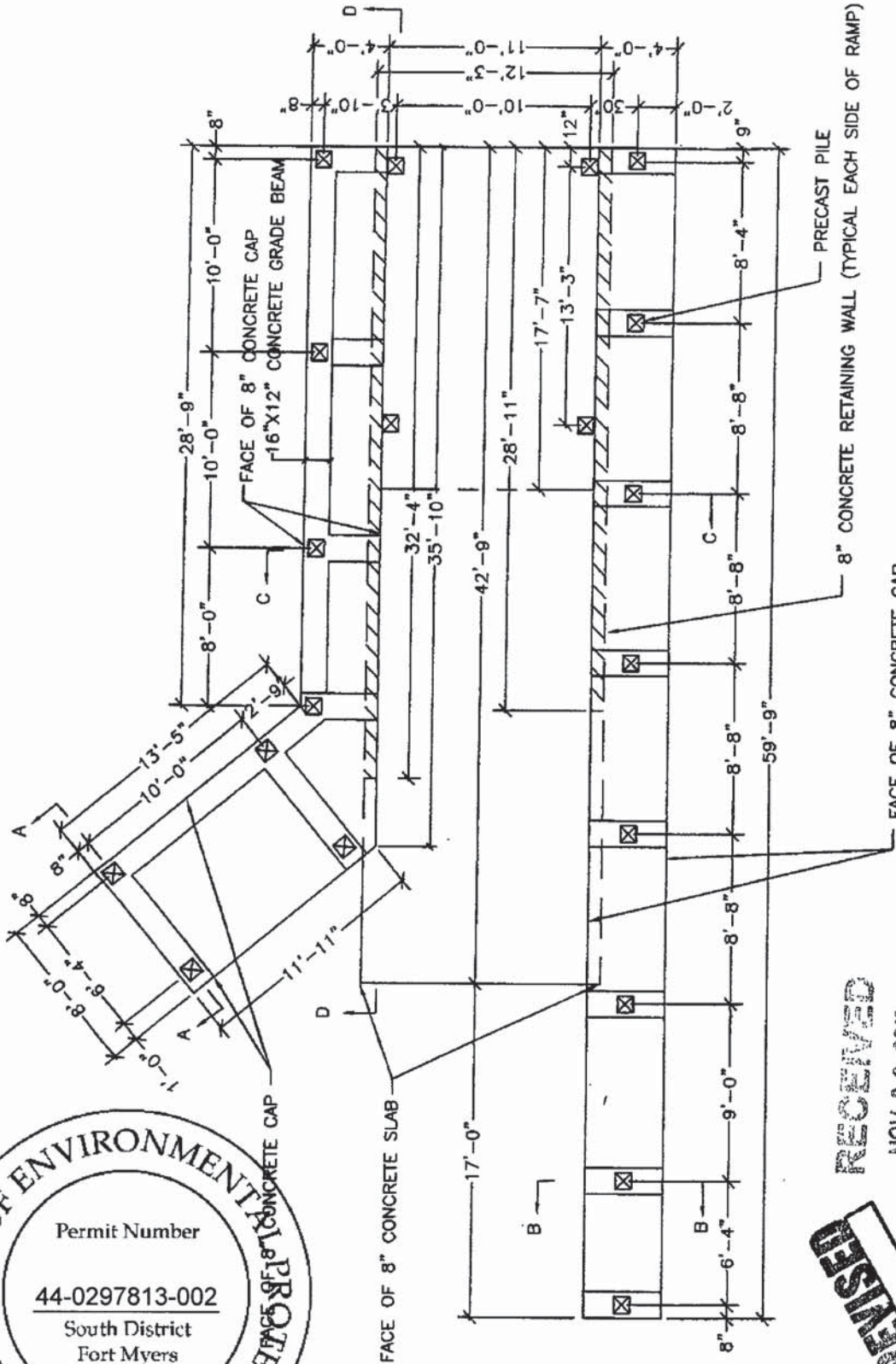
REVISIONS.	
1	10/30/12
2	11/27/12

CERTIFIED BY:  
 SEAN KIRWAN, PE #57506

FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
 FOR GARY TEDESCO  
 FLAMINGO ISLAND, MONROE COUNTY, FL


GLEN BOE & ASSOCIATES, INC #4061  
 5800 OVERSEAS HIGHWAY, SUITE 4  
 MARATHON, FL 33050  
 TEL: (305) 743-9121 FAX: (305) 743-9197

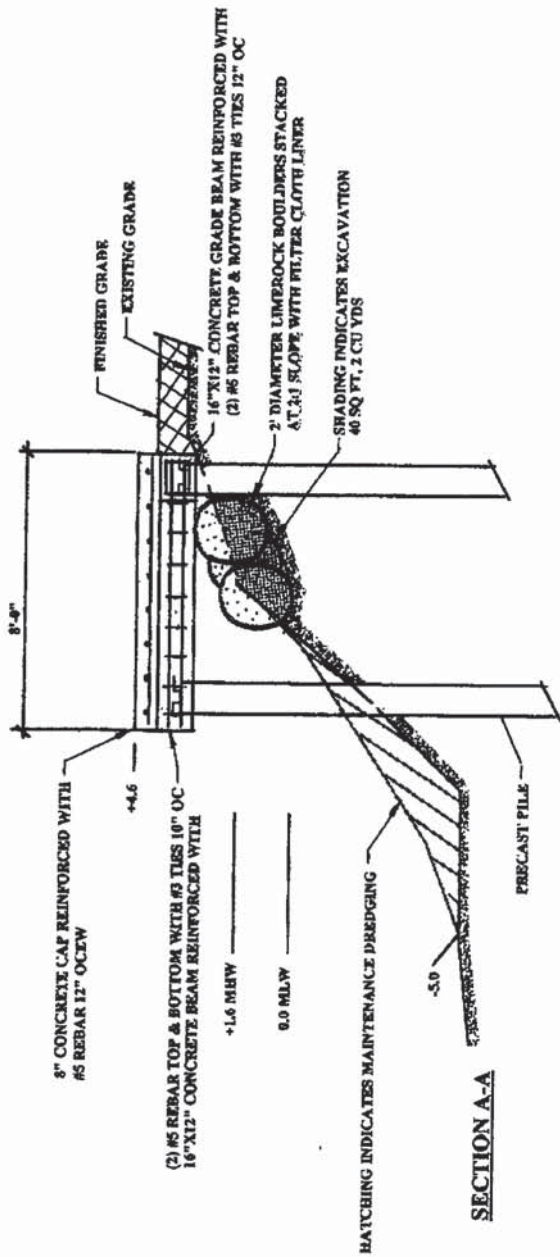
DATE: 09/05/12  
 2  
 SHEET 2 OF 7



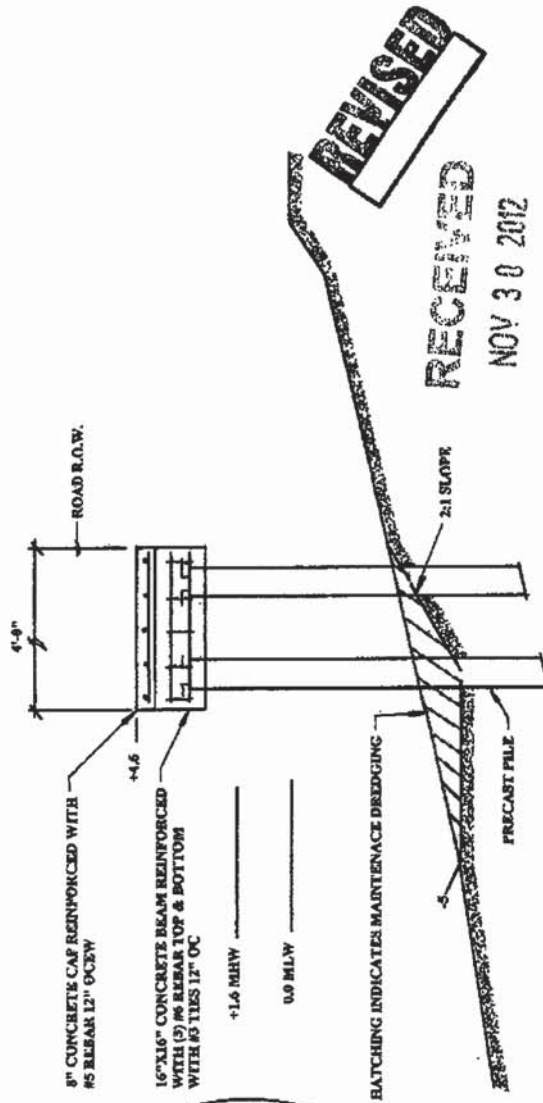
**RECEIVED**  
 NOV 30 2012  
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**FOUNDATION PLAN**  
 SCALE: 1/8" = 1'-0"

DATE: 09/05/12	REVISIONS
3	1 11/27/12
<b>FILL FOR RESIDENCE, DOCK, PIER, RAMP &amp; BOAT LIFT          FOR GARY TEDESCO          FLAMINGO ISLAND, MONROE COUNTY, FL</b>	
<b>GLEN BOE &amp; ASSOCIATES, INC #4061          5800 OVERSEAS HIGHWAY, SUITE 4          MARATHON, FL 33050          TEL: (305) 743-9121 FAX: (305) 743-9197</b>	
	
CERTIFIED BY: SEAN KIRWAN, PE #57506	
SHEET 3 OF 7	



**SECTION A-A**



**SECTION B-B**

SECTION A & B  
SCALE: 3/16" = 1'-0"

NOV 30 2012

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REVISIONS:	
1	10/30/12
2	11/27/12

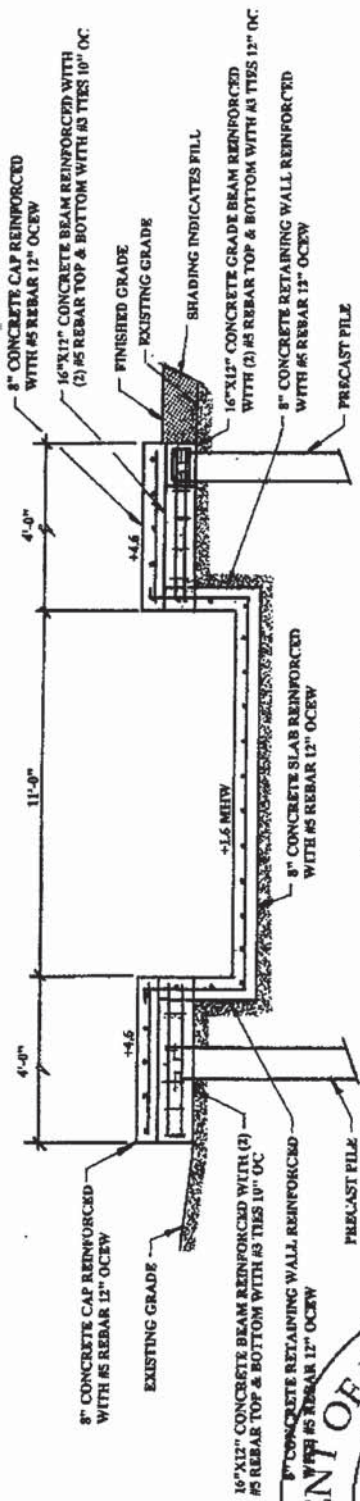
CERTIFIED BY:  
SEAN KIRWAN, PE #57506

FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
FOR GARY TEDESCO  
FLAMINGO ISLAND, MONROE COUNTY, FL

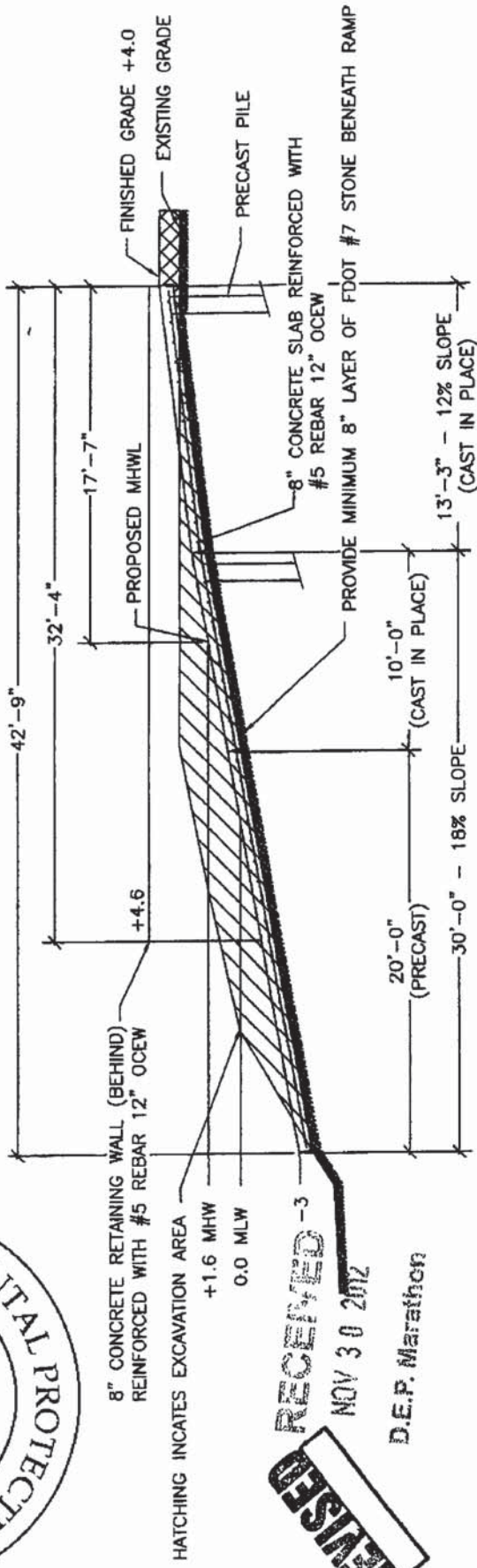
GLEN BOE & ASSOCIATES, INC #4061  
5800 OVERSEAS HIGHWAY, SUITE 4  
MARATHON, FL 33050  
TEL: (305) 743-9121 FAX: (305) 743-9197

DATE: 09/05/12  
4  
SHEET 4 OF 7






**SECTION C-C**  
SCALE: 3/16" = 1'-0"

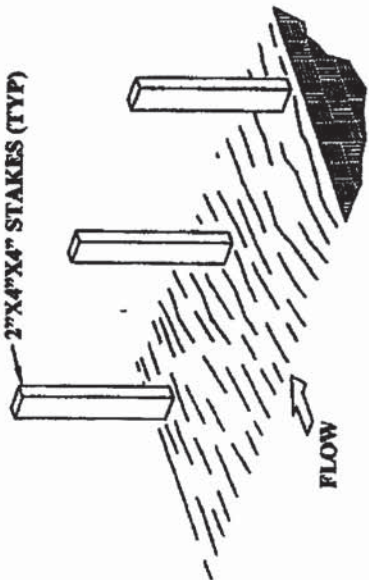


**SECTION D-D**  
SCALE: 1/8" = 1'-0"

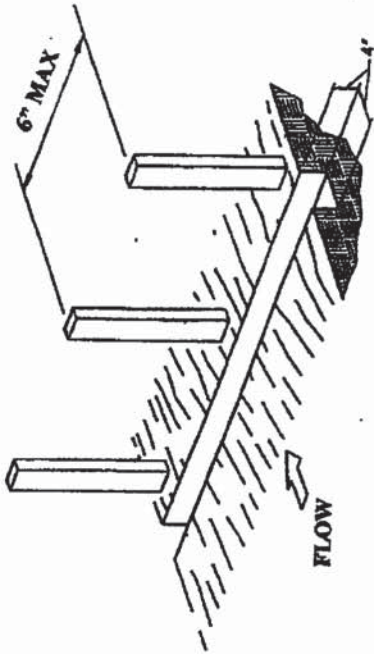
**RECEIVED**  
NOV 30 2012  
D.E.P. Marathon

**SECTION C & D**

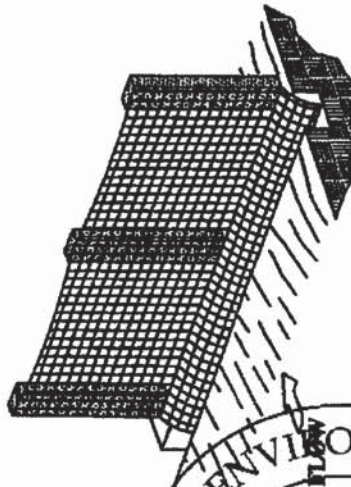
DATE: 09/05/12	5	SHEET 5 OF 7	GLEN BOE & ASSOCIATES, INC #4061 5800 OVERSEAS HIGHWAY, SUITE 4 MARATHON, FL 33050 TEL: (305) 743-9121 FAX: (305) 743-9197	FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT FOR GARY TEDESCO FLAMINGO ISLAND, MONROE COUNTY, FL	CERTIFIED BY: SEAN KIRWAN, PE #57506	REVISIONS: 1 11/27/12
						



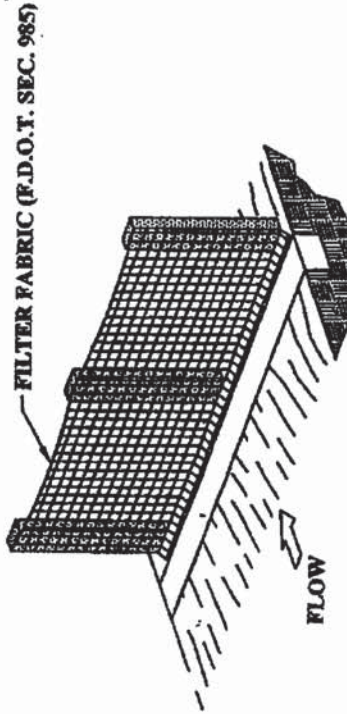
1. SET THE STAKES.



2. EXCAVATE A 4" X 4" TRENCH UPSLOPE ALONG THE LINE OF STAKES



3. SET THE FILTER FABRIC TO STAKES AND EXTEND IT INTO TRENCH

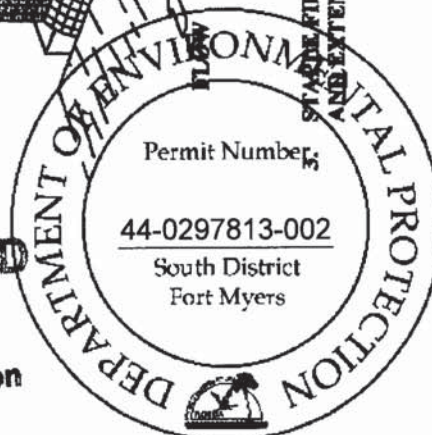


4. BACKFILL AND COMPACT THE EXCAVATED SOIL

F.D.O.T. FILTER FENCE DETAIL

**REVISED**

**RECEIVED**  
 OCT 31 2012  
 D.E.P. Marathon



REVISIONS:	

*S.K. Kirwan*  
 2/3/12  
 CERTIFIED BY:  
 SEAN KIRWAN, PE #57506

FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
 FOR GARY TEDESCO  
 FLAMINGO ISLAND, MONROE COUNTY, FL

GLEN BOE & ASSOCIATES, INC #4861  
 5800 OVERSEAS HIGHWAY, SUITE 4  
 MARATHON, FL 33050  
 TEL: (305) 743-9121 FAX: (305) 743-9197

DATE: 09/05/12  
 6  
 SHEET 6 OF 7

**GENERAL NOTES:**

1. CONTRACTOR SHALL OBTAIN ALL APPLICABLE PERMITS PRIOR TO COMMENCING WORK. THE REQUIREMENTS OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE ARMY CORPS OF ENGINEERS & LOCAL REGULATIONS SHALL GOVERN ALL WORK.
2. WORK SHOWN ON DRAWINGS IS DESIGNED IN ACCORDANCE WITH THE FLORIDA BUILDING CODE (LATEST EDITION). FOLLOW ALL APPLICABLE PROVISIONS FOR ALL PHASES OF CONSTRUCTION.
3. THE PROPOSED STRUCTURE(S) IS DESIGNED FOR A LIVE LOAD OF 40 PSF. WIND LOADS ARE DESIGNED PER THE FLORIDA BUILDING CODE.
4. CONTRACTOR SHALL ADHERE TO THE STANDARD MANATEE CONSTRUCTION CONDITIONS (LATEST EDITION). IF NEEDED, THE CONTRACTOR CAN CONTACT THE ARMY CORPS OF ENGINEERS OR THIS OFFICE TO OBTAIN A COPY OF THE STANDARD MANATEE CONSTRUCTION CONDITIONS.
5. BEST MANAGEMENT PRACTICES, INCLUDING THE USE OF TURBIDITY SCREENS, ARE REQUIRED TO ISOLATE THE CONSTRUCTION AREA FROM THE ADJACENT WATERS. CONTRACTOR SHALL INSTALL TURBIDITY SCREENS AROUND THE IMMEDIATE PROJECT AREA PRIOR TO CONSTRUCTION. THE TURBIDITY SCREENS REMAIN IN PLACE UNTIL WATER QUALITY CONDITIONS RETURN TO PRECONSTRUCTION CONDITIONS. WATER QUALITY MONITORING SHALL ADHERE TO STATE REGULATIONS.
6. ELECTRIC & WATER (DESIGN PROVIDED BY OTHERS UNLESS SHOWN) SHALL BE PROVIDED. CONTRACTOR SHALL COORDINATE FINAL LOCATION OF ALL PROPOSED UTILITIES WITH OWNER PRIOR TO CONSTRUCTION.
7. CONTRACTOR SHALL FIELD VERIFY DIMENSIONS & WATER DEPTHS PRIOR TO CONSTRUCTION. ANY DISCREPANCIES ON THE DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE COMMENCING WORK.
8. THE STRUCTURAL INTEGRITY OF THE COMPLETED STRUCTURE DEPENDS ON INTERACTION OF VARIOUS CONNECTED COMPONENTS. PROVIDE ADEQUATE BRACING, SHORING, AND OTHER TEMPORARY SUPPORTS AS REQUIRED TO SAFELY COMPLETE THE WORK.
9. EXERCISE EXTREME CARE AND CAUTION WHEN EXCAVATING AND FILLING ADJACENT TO EXISTING STRUCTURES. UNDER NO CIRCUMSTANCES SHALL THE STRUCTURAL INTEGRITY OF THE EXISTING STRUCTURES BE IMPAIRED IN ANY WAY BY CONSTRUCTION OPERATIONS AND PROCEDURES. DO NOT EXCAVATE OR DISTURB SOIL ADJACENT TO OR BENEATH EXISTING FOOTINGS.
10. CONTRACTOR SHALL COORDINATE INSTALLATION OF CLEATS, LADDERS, PILE CAPS, AND OTHER DOCK ACCESSORIES WITH OWNER PRIOR TO CONSTRUCTION. ALL DOCK ACCESSORIES SHALL BE INSTALLED PER MANUFACTURER'S SPECIFICATIONS. STAINLESS STEEL HARDWARE SHALL BE USED FOR ALL CONNECTIONS TO DOCK. PROVIDE A MINIMUM OF 3" CLEARANCE FROM EDGE OF STRUCTURE TO EDGE OF BOLTS.

**CONCRETE PILES:**

10"x10" PRESTRESSED CONCRETE PILES W/ FOUR 7#16" DIAMETER 270K STRANDS @ 21,700# INITIAL PULL (EACH) W/ W3 4 WIRE SPIRAL TIES. MINIMUM COMPRESSIVE STRENGTH AT 28 DAYS SHALL BE 5000 PSI. CONCRETE SHALL BE FDOT CLASS V SPECIAL. ALL REINFORCING STEEL, EXCEPT SPIRAL TIES, SHALL BE ASTM A615, GRADE 60. SPIRAL TIES SHALL BE HARD DRAWN BASIC WIRE IN ACCORDANCE WITH ASTM A-82. EACH WRAP OF SPIRAL SHALL BE TIED TO AT LEAST TWO CORNER STRANDS.

PILES SHALL BE SET IN PREDRILLED OR PREPUNCHED HOLES AND DRIVEN TO PENETRATE FIRM ROCK 7' MIN.

PILES SHALL BE SPACED @ MAXIMUM OF 10' O.C. UNLESS OTHERWISE SHOWN.

DO NOT DRIVE PILES WITHIN 20 FEET OF CONCRETE LESS THAN SEVEN DAYS OLD

RE-DRIVE ANY PILE WHICH IS RAISED DURING DRIVING OF ADJACENT PILES, TO THE ORIGINAL TIP ELEVATION.

CUT OFF PILES TO PROVIDE A MINIMUM OF 5" EMBEDMENT INTO CONCRETE CAP. PROVIDE A MINIMUM 30" SPLICE FOR ALL STRANDS.

PILES SHALL DEVIATE FROM PLUMB AND ANGLE OF BATTER NO MORE THAN 1/4 INCH PER FOOT OF PILE LENGTH, BUT NOT MORE THAN 6 INCHES OVERALL. PILES SHALL NOT DEVIATE FROM LOCATION OF PILE TOP MORE THAN 6 INCHES.

REMOVE CUTOFF SECTIONS OF PILES FROM THE SITE AND LEGALLY DISPOSE.

**CONCRETE CAP, BEAMS, RETAINING WALL & SLAB:**

CAST IN PLACE CONCRETE SHALL BE TYPE II CONCRETE WITH A COMPRESSIVE STRENGTH OF 5,000 PSI AT 28 DAYS. MAXIMUM WATER-CEMENTIOUS MATERIALS RATIO BY WEIGHT RATIO SHALL BE 0.40. SLUMP SHALL NOT EXCEED 5"(1±).

REINFORCING BARS SHALL BE NEW BILLET STEEL CONFORMING TO ASTM A 615, GRADE 60. ALL DETAILING AND ACCESSORIES TO CONFORM TO ACI DETAILING MANUAL (LATEST EDITION).

PROVIDE 3/4" CHAMFER ON ALL EXPOSED CONCRETE EDGES.

PROVIDE LIGHT BROOM FINISH ON ALL EXPOSED CONCRETE SLABS

REINFORCED CONCRETE CONSTRUCTION TO CONFORM TO ACI 318 "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE".

PROVIDE SLEEVES FOR ALL PIPES, CONDUITS, ETC., THAT PENETRATE CONCRETE STRUCTURAL MEMBERS PRIOR TO PLACEMENT OF CONCRETE. CUTTING OR DRILLING OF HARDENED CONCRETE NOT PERMITTED.

DO NOT EMBED HORIZONTAL CONDUITS, PIPES, ETC., IN HORIZONTAL CONCRETE STRUCTURAL MEMBERS UNLESS SPECIFICALLY SHOWN ON STRUCTURAL DRAWINGS.

REQUIRED CONCRETE COVER FOR REINFORCING STEEL (UNLESS NOTED OTHERWISE):

CONCRETE CAP, RETAINING WALL & SLAB - TOP 2" MINIMUM, BOTTOM 3" MINIMUM, SIDES 3" MINIMUM  
 CONCRETE BEAMS - 3" ALL SIDES

PROVIDE CHAIRS, SPACERS, TIES, AND ALL DEVICES NECESSARY FOR PROPER PLACING, SPACING, SUPPORTING, AND FASTENING REINFORCEMENT AS REQUIRED BY ACI 315. PROVIDE CHAIRS, SPACERS, BOLSTERS, AND ITEMS IN CONTACT WITH FORMS WITH HOT-DIP GALVANIZED LEGS OR PLASTIC LEGS.

LAP SPLICE CONTINUOUS VERTICAL OR HORIZONTAL BARS IN CONCRETE MEMBERS BY WRAP TOGETHER IN CONTACT IN ACCORDANCE WITH ACI 318, LATEST EDITION, FOR CLASS "B" TENSION LAP SPLICES. DO NOT SPLICE CONTINUOUS TOP BARS IN BEAMS AT ENDS OF CLEAR SPANS. DO NOT SPLICE CONTINUOUS BOTTOM BARS IN BEAMS IN CLEAR SPANS BETWEEN SUPPORTS.

REVISIONS:			

*Steph*  
 CERTIFIED BY:  
 SEAN KIRWAN, PE #57506

**FILL FOR RESIDENCE, DOCK, PIER, RAMP & BOAT LIFT  
 FOR GARY TEDESCO  
 FLAMINGO ISLAND, MONROE COUNTY, FL**

**GLEN BOE & ASSOCIATES, INC #4061  
 5800 OVERSEAS HIGHWAY, SUITE 4  
 MARATHON, FL 33050  
 TEL: (305) 743-9121 FAX: (305) 743-9197**

DATE: 09/05/12  
 7  
 SHEET 7 OF 7



**REVISED**

**RECEIVED**  
 OCT 31 2012  
 D.E.P. Marathon

**CONSTRUCTION NOTES**



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southeast Regional Office  
263 13th Avenue South  
St. Petersburg, FL 33701

## SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

O:\forms\Sea Turtle and Smalltooth Sawfish Construction Conditions.doc





## STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at [ImperiledSpecies@myFWC.com](mailto:ImperiledSpecies@myFWC.com)
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at [MyFWC.com/manatee](http://MyFWC.com/manatee). Questions concerning these signs can be sent to the email address listed above.

# CAUTION: MANATEE HABITAT

All project vessels

## **IDLE SPEED / NO WAKE**

When a manatee is within 50 feet of work  
all in-water activities must

# **SHUT DOWN**

Report any collision with or injury to a manatee:

Wildlife Alert:

**1-888-404-FWCC(3922)**

cell \*FWC or #FWC



## STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE

1. An eastern indigo snake protection/education plan shall be developed by the applicant or requestor for all construction personnel to follow. The plan shall be provided to the Service for review and approval at least 30 days prior to any clearing activities. The educational materials for the plan may consist of a combination of posters, videos, pamphlets, and lectures (*e.g.*, an observer trained to identify eastern indigo snakes could use the protection/education plan to instruct construction personnel before any clearing activities occur). Informational signs should be posted throughout the construction site and along any proposed access road to contain the following information:
  - a. a description of the eastern indigo snake, its habits, and protection under Federal Law;
  - b. instructions not to injure, harm, harass or kill this species;
  - c. directions to cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site on its own before resuming clearing; and,
  - d. telephone numbers of pertinent agencies to be contacted if a dead eastern indigo snake is encountered. The dead specimen should be thoroughly soaked in water and then frozen.
2. If not currently authorized through an Incidental Take Statement in association with a Biological Opinion, only individuals who have been either authorized by a section 10(a)(1)(A) permit issued by the Service, or by the State of Florida through the Florida Fish Wildlife Conservation Commission (FWC) for such activities, are permitted to come in contact with an eastern indigo snake.
3. An eastern indigo snake monitoring report must be submitted to the appropriate Florida Field Office within 60 days of the conclusion of clearing phases. The report should be submitted whether or not eastern indigo snakes are observed. The report should contain the following information:
  - a. any sightings of eastern indigo snakes and
  - b. other obligations required by the Florida Fish and Wildlife Conservation Commission, as stipulated in the permit.

Revised February 12, 2004

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

Permit Number: \_\_\_\_\_

Permittee's Name & Address (please print or type): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Location of the Work: \_\_\_\_\_

\_\_\_\_\_

Date Work Started: \_\_\_\_\_ Date Work Completed: \_\_\_\_\_

Description of the Work (e.g. bank stabilization, residential or commercial filling, docks, dredging, etc.): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Acreage or Square Feet of Impacts to Waters of the United States: \_\_\_\_\_

Describe Mitigation completed (if applicable): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Describe any Deviations from Permit (attach drawing(s) depicting the deviations): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

I certify that all work, and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

Prepared by:

Permittee: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

**NOTICE OF DEPARTMENT OF THE ARMY PERMIT**

**TAKE NOTICE** that the United States Army Corps of Engineers has issued Department of the Army Permit SAJ- - - to (Permittee) on , 20 , authorizing impacts to waters of the United States (including wetlands) in accordance with Section 404 of the Clean Water Act on a parcel of land known as Folio/Parcel ID: \_\_\_\_\_ encompassing \_\_\_\_\_ acres located within a portion of Section \_\_\_\_\_, Township \_\_\_\_\_ South, Range \_\_\_\_\_ East, \_\_\_\_\_, \_\_\_\_\_ County, Florida.

Within thirty (30) days of any transfer of interest or control of that portion of the premises containing the area authorized to be filled (or any portion thereof), the Permittee must notify the U.S. Army Corps of Engineers in writing of the property transfer by submitting the completed permit transfer page of the permit. Notification of the transfer does not by itself constitute a permit transfer. Therefore, purchasers of that portion of the premises containing the area authorized to be filled (or any portion thereof) are notified that it is unlawful for any person to construct, alter, operate, maintain, remove or abandon any works, including dredging or filling, without first having obtained a permit from the Corps of Engineers in the purchaser's name.

The subject Permit concerns only that portion of the property determined to fall within the jurisdiction of the U.S. Army Corps of Engineers and this notice is applicable only to those portions of the subject property containing areas authorized to be filled and wetland mitigation/conservation areas subject to the Permit.

**Conditions of the Permit:** The Permit is subject to General Conditions and Special Conditions which may affect the use of the subject property. Accordingly, interested parties should closely examine the entire Permit, all associated applications, and any subsequent modifications.

To obtain a copy of the permit in its entirety submit a written request to:  
U.S. Army Corps of Engineers  
Regulatory Division - Special Projects & Enforcement Branch  
Post Office Box 4970  
Jacksonville, Florida 32232-0019

Questions regarding compliance with these conditions should be directed to:  
U.S. Army Corps of Engineers  
Enforcement Section  
Post Office Box 4970  
Jacksonville, Florida 32232-0019

**Conflict Between Notice and Permit**

This Notice of Permit is not a complete summary of the Permit. Provisions in this Notice of Permit shall not be used in interpreting the Permit provisions. In the event of conflict between this Notice of Permit and the Permit, the Permit shall control.

**This Notice is Not an Encumbrance**

This Notice is for informational purposes only. It is not intended to be a lien, encumbrance, or cloud on the title of the premises.

**Release**

This Notice may not be released or removed from the public records without the prior written consent of the U.S. Army Corps of Engineers.

This Notice of Permit is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

This document is being submitted for recordation in the Public Records of \_\_\_\_\_ County, Florida as part of the requirement imposed by Department of the Army Permit No SAJ- \_\_\_\_\_ issued by the United States Army Corps of Engineers.

Permittee: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ as identification.

(seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print

My Commission Expires \_\_\_\_\_

# Functional Assessment KEYMIG Worksheet

4/11/2013  
11:03 AM

Permit Number: SAJ-2009-03717		Applicant Name: Tedesco, Gary	
Rank	LOT (L)	Shoreline Fringe (SF)	SAR
D2	0.500	K3	Rank O3
DU/Sq.Ft.	8358	1,000	DU/Sq.Ft. 1,000
Sq.Ft. Impacted	\$ 4,179.00	\$ 610.00	Sq.Ft. Impacted 502
DU	\$ 6,184.92	\$ 902.80	DU \$ 502.00
DU Adjusted			DU Adjusted \$ 2,620.44
%Mature/semi-mature	40%	95%	%Sessile Marine Organisms, Algae, Mangrove prop-roots, Syringodium, Halodule, and Halophila 100%
%Scrub/Shrub	20%	0%	
%Herbaceous	30%	5%	
Risk			%Thalassia 0%
Mature/semi-mature	\$ 2,721.36	\$ 943.43	Risk
Scrub/Shrub	\$ 1,360.68	\$ -	Sessile Marine Organisms, Algae, Mangrove prop-roots, Syringodium, Halodule, and Halophila \$ 3,406.57
Herbaceous	\$ 1,948.25	\$ 47.40	
Temporal Loss			
Mature/semi-mature	\$ 3,715.68	\$ 1,394.36	Thalassia \$ -
Scrub/Shrub	\$ 1,580.17	\$ -	Temporal Loss
Herbaceous	\$ 2,014.74	\$ 49.01	Sessile Marine Organisms, Algae, Mangrove prop-roots, Syringodium, Halodule, and Halophila \$ 3,522.83
<b>Total</b>	<b>\$ 7,310.51</b>	<b>\$ 1,443.38</b>	<b>\$ 3,522.83</b>

Resource Impact	
Subtotal (RIS)	\$ 12,276.79
Land Acquisition	
Component (LAC)	\$ 8,962.05
Fund Administrative Fee (FAF)	\$ 3,185.83
<b>Total Mitigation Due</b>	<b>\$ 24,424.67</b>



DEPARTMENT OF THE ARMY  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS  
9900 SOUTHWEST 107<sup>TH</sup> AVENUE, SUITE 203  
MIAMI, FLORIDA 33176

January 10, 2017

REPLY TO  
ATTENTION OF

Regulatory Division  
South Permits Branch  
Miami Permits Section  
SAJ-2009-03717 (SP-MIB)

James & Karen Ruggio  
1318 Wickford Lane  
Lanoka Harbor, NJ 08734-2912

Dear Mr. & Mrs. Ruggio:

This is in reference to your letter dated November 21, 2016, regarding the transfer of Department of the Army permit number SAJ-2009-03717 (SP-MIB). The permit was originally issued to place 310 cubic yards of fill within a 8,358 square foot area (7,975 square foot wetland area within the platted lot lines) for the construction of a single-family residence with associated amenities, to place 4 cubic yards of fill within a 56 square foot red mangrove shoreline to construct a 14 linear foot riprap revetment, to place 22 cubic yards for fill within a 664 square foot area for the construction of a concrete marginal dock, a finger pier and boat ramp totaling 944 square foot (334 sq. ft. waterward of the mean high waterline), to excavate 27 cubic yards of wetlands for the construction of a 364 square foot boat ramp, to dredge 37 cubic yards of red mangroves and submerged bottom within a 502 square foot area to minus 5 feet mean low water, to install a 7,000 lb capacity elevator boatlift and to install temporary floating turbidity barriers around all work areas that are in/over U.S. navigable waters on April 29, 2013. The project is located at 111 Santa Barbara on an undeveloped wetland lot adjacent to a canal in Section 15, Township 66 South, Range 32 East, Marathon, Monroe County, Florida (MM 50). RE#00356140-000000. This notification is now part of the official permit and reflects the following:

Transfer From: Gary Tedesco  
14 York Street  
Kennebunk, ME 04043-7172

Transfer To: James & Karen Ruggio  
1318 Wickford Lane  
Lanoka Harbor, NJ 08734-2912





## Florida Department of Environmental Protection

South District  
Post Office Box 2549  
Fort Myers, Florida 33902-2549  
[SouthDistrict@dep.state.fl.us](mailto:SouthDistrict@dep.state.fl.us)

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Ryan Matthews  
Interim Secretary

January 26, 2017

James and Karen Ruggio  
c/o Sean Kirwan  
Glen Boe & Associates, Inc.  
5800 Overseas Hwy, Ste 4  
Marathon, FL 33050  
[glenboe@bellsouth.net](mailto:glenboe@bellsouth.net)  
[jimruggio@comecast.net](mailto:jimruggio@comecast.net)

Re: Monroe County – ERP  
File No. 0297813-003 EM  
Modification of 0297813-002 EI

Dear Mr. and Mrs. Ruggio:

Thank you for your request to transfer 0297813-002 issued to Gary Tedesco. The transfer of this permit to James and Karen Ruggio is hereby approved and effective.

This notice of transfer does not alter the expiration date, Specific or General Conditions, or monitoring requirements of the permit. This letter must be attached to the original permit.

This action is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.) as provided below. If a sufficient petition for an administrative hearing is timely filed, this action automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired.

Mediation is not available.

A person whose substantial interests are affected by the Department's action may petition or an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of

[www.dep.state.fl.us](http://www.dep.state.fl.us)

General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in a modification of the permit/consent to use or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit/consent to use automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit/consent to use until the deadlines noted below for filing a petition for an administrative hearing, or request for an extension of time have expired.

Under Rule 62-110.106(4), Florida Administrative Code (F.A.C.), a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rules 28-106.111(2) and 62-110.106(3)(a)(4), F.A.C., petitions for an administrative hearing by the applicant or any of the parties listed below must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules and statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

The action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit/intent to issue constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable

Permittee: Ruggio, James and Karen  
Permit No: 0297813-003 EM  
Page 4 of 4

filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of Section 373.114(1)(a), F.S., may also seek appellate review of this order Section 373.114(1), F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the final order is filed with the Clerk of the Department.

Sincerely,

Jon M. Iglehart  
Director of District Management

JMI/tjs

Permit file# 0297813-002 EI:

[https://depdms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=23.293111.1\]&\[profile=Permitting\\_Authorization\]](https://depdms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=23.293111.1]&[profile=Permitting_Authorization])

forms <http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>

cc: U.S. Army Corps of Engineers, [Miami\\_seappls@usace.army.mil](mailto:Miami_seappls@usace.army.mil)

#### CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document, including all copies, was mailed before the close of business on January 26, 2017, to the above listed person(s).

#### FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.



Clerk

January 26, 2017

Date



December 10, 2018

City of Marathon Planning Department  
9805 Overseas Highway  
Marathon, Florida 33050

Reference: Application Number DP2018-0183  
James and Karen Ruggio Property  
111 Santa Barbara  
Proposed for Boat Ramp Construction

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Dear Staff:

I have owned the property located at 689 Calle de Luna since 1988. My east property corner is approximately 20 feet from the nearest part of the proposed construction. I have reviewed the plans on file at the city offices for the construction of the proposed boat ramp and I am opposed for a number of reasons.

The largest of these concerns is the destruction and permanent loss of the mangrove fringed shoreline. As we have all learned, mangroves stabilize the shoreline, enhance water quality and provide habitat. Unlike building a dock on the waterward side of the mangroves, the boat ramp will cause a permanent breach in mangrove vegetation. All of the other homes along the canal have boat docks located on the waterward side of the mangroves allowing them to be preserved. In some areas, the mangroves have become an opaque screen on the landward side of the boat docks. The concrete boat ramp is very different as its presence completely destroys and precludes any mangrove recovery. Permanently destroying mangroves is a practice that rightfully ended long ago.

I am also concerned about the complete destruction of the natural vegetation between the canal and Calle de Luna. The area I'm referring to is not within the Ruggio's property but along the Calle de Luna, adjacent to the canal. The plans on file indicate that approximately 30 linear feet of vegetation, including some mangroves, will be destroyed within the public right-of-way. This area is currently lush with natural vegetation which obscures the view of the canal from the road providing both privacy and security to the canal properties.

*Consulting Engineers and Planners*

City of Marathon Planning Department  
December 10, 2018  
Page Two

Additionally, I am very concerned about the note on the plans stating "PEDESTRIAN ACCESS TO THE PIER". This pedestrian access will be accessible along the entire length of Calle de Luna. Therefore, anyone passing by will be able to easily access the proposed dock and will have access to the canal. The combination of an easy path to the canal plus the 30 foot breach in vegetation will likely become regularly utilized by those seeking easy access to the water.

Another concern is that the plan shows a very limited area for boat docking. There is dock space available for one (1) boat approximately 25 feet in length. There is no space available for a second boat. As a practical matter, there will be times when more than one boat slip will be needed, especially when one considers the potential for the property to be used as a vacation rental.

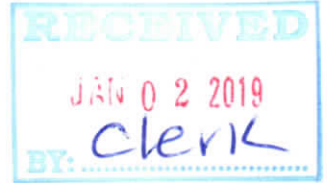
Finally, the intense use of the shoreline, as proposed, is an over utilization of this irregular reverse pie shaped lot. As proposed, the boat ramp will become a nuisance, reduce privacy, security and safety to the other canal neighbors. Among the Purposes and Intent of the City of Marathon Land Development Regulations includes "Protection for the existing uses; ensuring new and redevelopment complements and enhances community character; implementation of thoughtful controlled growth; and protecting the health, safety and general welfare of the residents of the City".

In closing, I am not opposed to the construction of a boat dock to serve their property. provided it be constructed waterward of the mangroves similar to the other docks along the canal.

Very truly yours,  
**MESIMER AND ASSOCIATES, INC.**



Reginald V. Mesimer, P.E.  
President



December 28, 2018

The Honorable Mayor John Bartus  
City Hall  
9805 Overseas Highway  
Marathon, Florida 33050

Reference: Application Number DP2018-0183  
James and Karen Ruggio Property  
111 Santa Barbara  
Proposed Boat Ramp Construction  
Hearing Date January 8, 2019

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Dear Mayor Bartus:

I have owned the property located at 689 Calle de Luna since 1988. My east property corner is approximately 20 feet from the nearest part of the proposed construction. I have reviewed the plans on file at the City offices for the proposed boat ramp and I am opposed. Mr. Randy Marx, who owns the adjacent property to the Ruggio's has also objected via his letter to the Planning Commission as well as Mr. Beumel who lives next to Mr. Marx. We are the three (3) nearest property owners to the Ruggio's lot.

The largest of my concerns is the destruction and permanent loss of the mangrove fringed shoreline. As we have all learned, mangroves stabilize the shoreline, enhance water quality and provide habitat. Unlike building a dock on the waterward side of the mangroves, the boat ramp will cause a permanent breach in mangrove vegetation. All of the other homes along the canal have boat docks located on the waterward side of the mangroves allowing them to be preserved. In some areas, the mangroves have become an opaque screen on the landward side of the boat docks. The concrete boat ramp is very different as its presence completely destroys and precludes any mangrove recovery. The permanent destruction of mangroves is a practice that rightfully ended long ago.

I am also concerned about the complete destruction of the natural vegetation between the canal and Calle de Luna. The area I'm referring to is not within the Ruggio's property but along Calle de Luna, adjacent to the canal.

*Consulting Engineers and Planners*

4738 CENTRAL AVENUE • ST. PETERSBURG, FLORIDA 33711  
(727) 894-5589 • FAX (727) 898-4937

The Honorable Mayor John Batrus  
December 28, 2018  
Page Two

The plans on file indicate that approximately 30 linear feet of vegetation, including some mangroves, will be destroyed within the public right-of-way. This area is currently lush with natural vegetation which obscures the view of the canal from the road providing both privacy and security to the canal properties.

Additionally, I am very concerned about the note on the plans stating "PEDESTRIAN ACCESS TO THE PIER". This pedestrian access will be accessible along the entire length of Calle de Luna. Therefore, anyone passing by will be able to easily access the proposed dock and will have access to the canal. The combination of an easy path to the canal plus the 30 foot breach in vegetation will likely become regularly utilized by those seeking easy access to the water.

Another concern is that the plan shows a very limited area for boat docking. There is dock space available for one (1) boat approximately 25 feet in length. There is no space available for a second boat. As a practical matter, there will be times when more than one boat slip will be needed, especially when one considers the potential for the property to be used as a vacation rental.

Finally and most importantly, Mr. Ruggio testified at the Planning Commission Hearing on December 17, 2018, that once the boat ramp is constructed, he has no intention of using it. Instead, he will install a boat lift at the bottom of the ramp precluding the ability to use of the ramp. The boat lift is shown on his plans prepared by Glen Boe, Incorporated although the boat lift is easy to overlook on the drawings. Mr. Ruggio testified that, he could not get the dredging needed for just a boat lift, through the Army Corp, however, he could get a permit for the necessary dredging for a boat ramp. Therefore, it appears that Mr. Ruggio is being forced to build a boat ramp he doesn't plan to use as a technicality enabling him to permit and install a boat lift.

I have prepared two exhibits for you to review and have labeled them Exhibit 1 and Exhibit 2. Exhibit 1 is a drawing that depicts what the Ruggio's propose to build. As you can see, once the boat lift is installed, the proposed boat ramp becomes useless. What a waste of time energy and money.

Exhibit 2 is a drawing that depicts a similar plan but without a boat ramp. This plan seems to provide the Ruggio's with what they said they wanted, at the Planning Commission Hearing. While I would still have a number of concerns, I would not object if this were proposed, providing the mangroves and native vegetation along Calle de luna is replaced.



The Honorable Mayor John Bartus  
December 28, 2018  
Page Three

In closing, thank you for taking the time to read this lengthy letter. Please ask the Ruggio's to go back to the drawing board and come up with a better plan that is not so destructive.

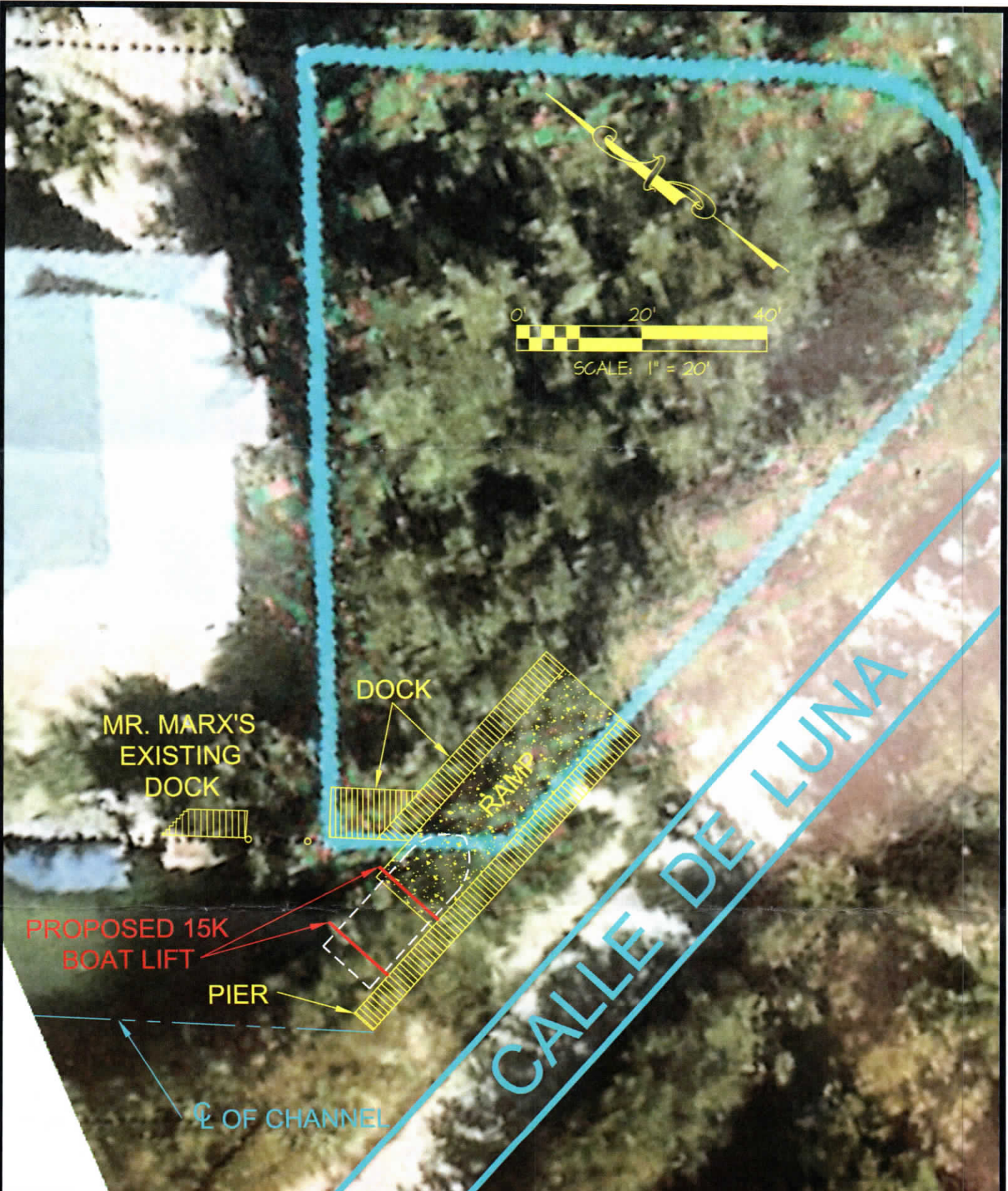
Very truly yours,  
**MESIMER AND ASSOCIATES, INC.**



Reginald V. Mesimer, P.E.  
President

Attachments:

- Exhibit 1 "As Proposed by the Ruggio's"
- Exhibit 2 "Suggested Plan with No Boat Ramp"

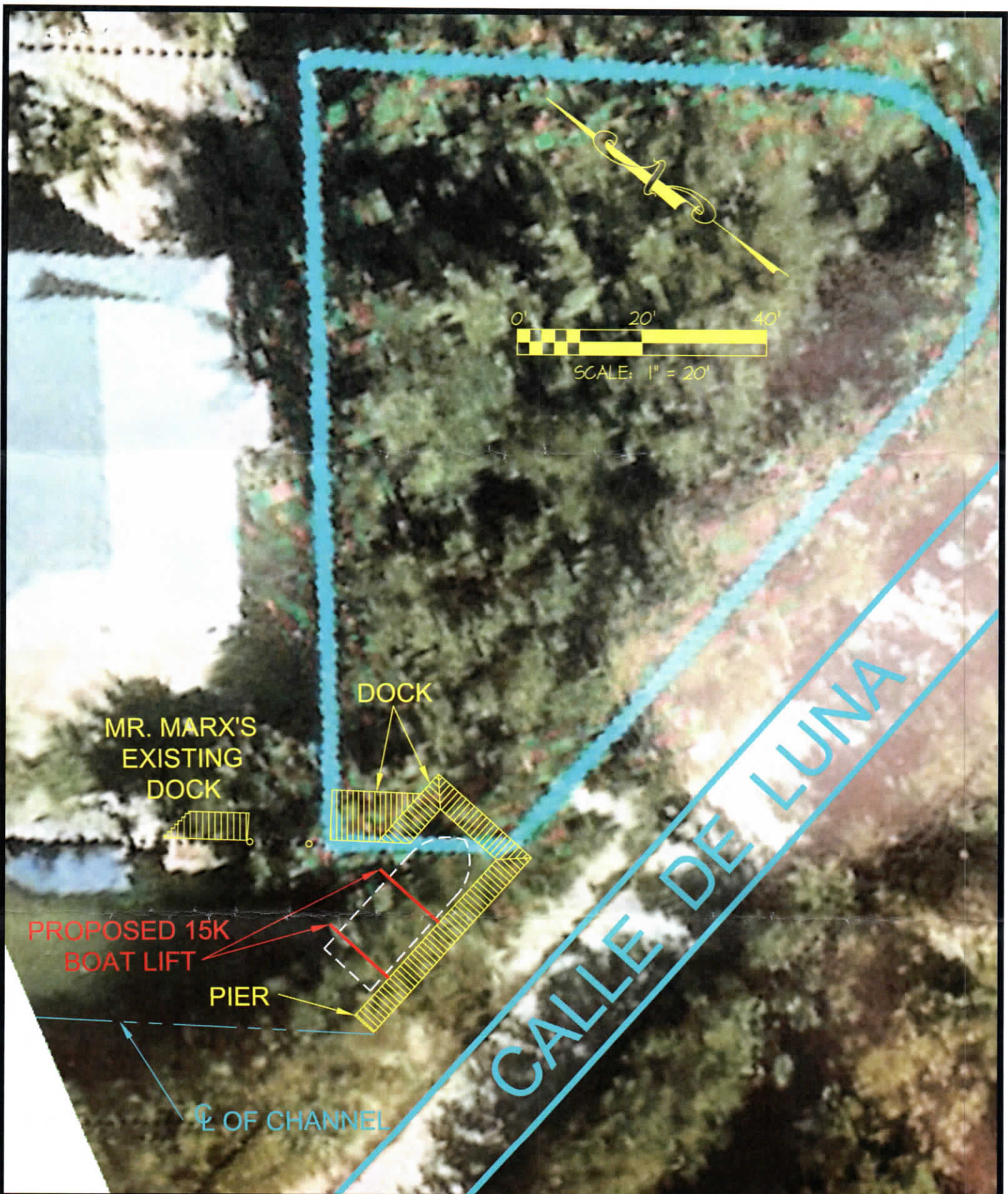


DESIGNER: N/A	SCALE: AS NOTED
DRAWN BY: RVM	DATE: 12-28-18
CHECKED BY: RVM	PROJ. NO.: NA

**AS PROPOSED  
BY THE RUGGIO'S**

DATE	BY	REVISION

SHEET	1	OF	2
-------	---	----	---



DESIGNER: N/A	SCALE: AS NOTED
DRAWN BY: RVM	DATE: 12-28-18
CHECKED BY: RVM	PROJ. NO.: NA

**SUGGESTED PLAN  
WITH NO BOAT RAMP**

DATE	BY	REVISION

SHEET  
**2** OF **2**

December 8, 2018

City of Marathon Planning Department  
9805 Overseas Highway  
Marathon, FL 33050

RE: Application #: DP2018-0183

Dear Planning Department Members;

I am a resident and property owner within 300 feet of the proposed property. I object to the construction of the proposed boat ramp, dock and pier. I am primarily concerned with the pier construction at the end of the canal paralleling the road (Calle de Luna).

The proposed work will require removal of a significant amount of mangrove vegetation. I reviewed the permit drawings at the City Planning Department and then visited the site of the proposed construction. The work would remove not only most of the mature mangrove vegetation along approximately 30 feet of shoreline, it would also involve the excavation and removal of much of the root system of those plants. The attached photograph shows the vegetation along the alignment of the proposed ramp and pier, most of which will be destroyed by construction. Removal of this vegetation would severely alter the storm protection characteristics afforded to our little "Hurricane Hole" as well as possibly reducing water quality caused by drainage from the proposed ramp and the adjacent road.

Sincerely yours,



Norman H. Beumel  
107 Santa Barbara  
Marathon, FL 33050

Lot 72, Block 1, Amended Plat of Flamingo Island Estates  
Lot 9, Block 2, Amended Plat of Flamingo Island Estates

Received  
DEC 18 2018  
Planning

Randall E Marx  
PO Box 7252  
Tahoe City, CA 96145

12/9/2018

The City of Marathon Planning  
9805 Overseas Hwy  
Marathon FL 33050

Re: Applicant: James and Karen Ruggio  
Application: DP2018-0183  
Project Address: 111 Santa Barbara

To Whom It May Concern;

In regards to the proposed boat dock and boat ramp at 111 Santa Barbara Marathon, I Randall E Marx the homeowner and bordering neighbor at 109 Santa Barbara Strongly object the proposed dock next door to my property. I am unable to attend the Public Hearing Monday December 17, 2018 due to job constraint, I am requesting that this letter go on records as my objection to this project.

My reason for objecting the proposed dock is the removal of all the mangroves greatly reduced my privacy as well as the mangroves provide excellent protection from storms and was a proven hurricane hole during the last few hurricanes.

That property at best has 15 feet of water line with a strong mangroves root system. I am not trying to stop the Ruggio's from having a dock but a smaller dock outside of the mangroves as myself as well as the neighboring homes were required would be more acceptable. The proposed boat ramp should never be acceptable with the amount of fill material, bay bottom and mangroves to be removed.

Let's not forget this is the Florida Keys Marine Sanctuary and these mangroves play a big part in protecting it!

Sincerely



Randall E. Marx  
Homeowner: 109 Santa Barbara

**JAMES & KAREN RUGGIO**  
**441 East Bay Ave, Unit 8,**  
**Barnegat, NJ 08005**  
**(609) 661-0729**

January 1, 2019

City of Marathon, Mayor and City Council  
Meeting Scheduled January 8, 2019  
9805 Overseas Highway  
Marathon, Florida, 33050

Reference:

James and Karen Ruggio, Property  
111 Santa Barbara, Proposed Boat Ramp

Dear Mayor and City Council Members

My wife and I Karen are the property owners at 111 Santa Barbara. We are seeking your approval for a residential boat ramp on our property at the January 8<sup>th</sup>, Mayor and City Council Meeting.

Our story, married forty years in April, two children, Nicole married last May and Danielle to be married in Key West this May. I have worked in health care for nearly 40 years and in New York City for thirty five. I was working at NYU Medical Center treating victims during 911 and when Hurricane Sandy's nine foot storm surge wiped out the Medical Centers backup generator forcing patient excavations in the dark.

I am an avid fisherman/ boater and have lived on the water in New Jersey for twenty five years where I served as Vice President of the New Port Bay club home owners association.

When my residence is completed in Marathon, projected July 2019, Karen and I will be residing full time at 111 Santa Barbara. I will be semi-retired and working at Fisherman's Hospital around the corner from our new home.

With the purchase of our property, included was approved Florida Department of Environmental Protection and Army Corps of Engineers permits to build a single family residence, construction of a concrete marginal dock, finger pier, boat ramp and boat lift.

Glenn Boe and Associates, the engineering firm responsible for designing the project, was tasked by the previous property owner to take an irregular lot configuration in a corner and provide best navigable service for a boat.

As required by City of Marathon Planning department, a conditional use permit was required for the boat ramp portion of my project. I submitted application to Planning department and the meeting was held December 17, 2018.

After review of my application which was based on all applicable criteria and planning legal review **the Planning staff recommended and the Planning Director consented to conditional approval for the boat ramp.** A vote was taken by the four Planning Commissions in attendance after hearing mine and a property owner within 300 feet testimonies.

The Commissioners denied the conditional use of the boat ramp, articulating the following concerns:

- Questions regarding right of way, Effects of Storm water runoff
- Potential for future rental problems
- Potential for commercial use of ramp
- The survey provided to them was too small and illegible (I provided a full sized copy in my application)

With respect to my project outlined below are the facts presented at the City of Marathon Planning Commission Meeting as indicated on the attached Planning Commission Agenda Statement from George Garrett, Planning Director. I respectfully request each of you to review this document in its entirety prior to the January 8, City Council meeting.

1. The applicant has proposed construction of a boat ramp on a residential zoned parcel on developed land.
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, storm water management, wildlife, vegetation, wetlands and the natural function of the environment: and
  - e. **Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:**

1. Ingress and egress to property

2. Off street parking and loading areas, with particular reference to location, screening and 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 locations, 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 any proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
8. Required yards and other open space:  
General compatibility with surrounding properties

**Conditions Imposed on this project:**

The granting of approval for the ramp is subject to fifteen Conditions of Approval. Just to name some; detailed grading plans must be provided; runoff is required to diverted to storm water system with no off site discharge; boat ramp use limited to property owners and will not be used as a public ramp.

To specially address *security and unauthorized access concerns* raised at Planning Commission meeting I plan to do the following:

- Install a state of the art security system with cameras for the residence and property including the water and boat ramp linked to the police department and my cell phone.
- Install a barrier to boat ramp entrance either a chain and lock or gate.
- Maintain the boat lift position so as to deny access to water and unauthorized use of ramp.

Again, Karen and I respectively request your approval for our proposed boat ramp for the following reasons and statements of fact:

- I have obtained approved Army Corp of Engineers permits.
- I have obtained approved Department of Environmental Protection permits.
- I have paid all Mitigation fees for the above agencies.
- The Planning Director and his staff based on applicable criteria and law recommends conditional approval for ramp.



- My proposed ramp is similar to two other residential boat ramps both in the Flamingo Island Subdivision, one of which is located down the block at Calle de Luna.

Any Denial of the ramp will require significant time and expense to reengineer my project as well as ACOE & DEP review and approval. There is simply no guarantee by either of these regulators that any project would be approved that will allow for use of a boat in this difficult space other than the one I have submitted. Unfortunately, it is not as simple as placing a dock beyond the mangroves that was suggested by one of my neighbors.

I have complied with all Federal, State and local requirements for the ramp, taken all steps necessary to minimize any environmental impacts and have addressed any perceived potential access/security issues raised by my neighbors.

Please, I urge each of you to make your decision to approve the ramp based on the above facts and with reason and not solely on the arbitrary and capricious denial decision handed down by the four planning commissions at the December meeting.

Thank you all for your attention to this matter.

Sincerely, Karen and James Ruggio

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY JAMES AND KAREN RUGGIO FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS”, SEEKING AUTHORIZATION FOR THE CONSTRUCTION OF A BOAT RAMP AT THE PROPERTY LOCATED AT 111 SANTA BARBARA, NEAREST MILE MARKER 50, WHICH IS LEGALLY DESCRIBED AS BK 1, LT 70 AMENDED PLAT OF FLAMINGO ISLAND ESTATES, BOOT KEY, SECTION 15, TOWNSHIP 66, RANGE 32, MONROE COUNTY, FLORIDA HAVING REAL ESTATE NUMBER 00356140-000000.**

**WHEREAS**, James and Karen Ruggio (The “Applicant”) filed an Application on September 1, 2017 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 construction of a boat ramp on a single family residential zoned parcel on developed land; 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 Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 17<sup>th</sup> day of December, 2018, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**, The Planning Commission recommended denial of the residential boat ramp for James and Karen Ruggio based on a desire for more information. They did not specifically provide a basis for denial showing a reason why this project DOES NOT meet the requirements of the LDRs for a Conditional Use Permit.

**WHEREAS**, The Planning Department continues to recommend approval of the proposed boat ramp and dock based on the Department’s responses to the Planning Commissions concerns provided to the City Council; and

**WHEREAS**, and on the 8<sup>th</sup> day of January, 2019, the City Council (the “Council”)

conducted a properly advertised public hearing (the “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 2019-04, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Roger L. and Barbara C., 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 8TH DAY OF JANUARY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

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David Migut, City Attorney

**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2019-04**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY JAMES AND KAREN RUGGIO FOR A CONDITIONAL USE PERMIT, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS”, SEEKING AUTHORIZATION FOR THE CONSTRUCTION OF A BOAT RAMP AT THE PROPERTY LOCATED AT 111 SANTA BARBARA, NEAREST MILE MARKER 50, WHICH IS LEGALLY DESCRIBED AS BK 1, LT 70 AMENDED PLAT OF FLAMINGO ISLAND ESTATES, BOOT KEY, SECTION 15, TOWNSHIP 66, RANGE 32, MONROE COUNTY, FLORIDA HAVING REAL ESTATE NUMBER 00356140-000000.**

**WHEREAS**, James and Karen Ruggio (The “Applicant”) filed an Application on September 1, 2017 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 construction of a boat ramp on a single family residential zoned parcel on developed land; 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 Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 17<sup>th</sup> day of December, 2018 the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**, The Planning Commission recommended denial of the residential boat ramp for James and Karen Ruggio based on a desire for more information. They did not specifically provide a basis for denial showing a reason why this project DOES NOT meet the requirements of the LDRs for a Conditional Use Permit.

**WHEREAS**, The Planning Department continues to recommend approval of the proposed boat ramp and dock based on the Department’s responses to the Planning Commissions concerns provided to the City Council; and

**WHEREAS**, and on the 8<sup>th</sup> day of January, 2019, the City Council (the “Council”) conducted a properly advertised public hearing (the “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

**FINDINGS OF FACT:**

1. The Applicant has proposed construction of a boat ramp on a residential zoned parcel on developed land.
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. Detail grading plan depicting existing and proposed elevations for the proposed residence. All runoff is required to be diverted to the stormwater system with no off-site discharge.
2. City approval is required for the stormwater management system prior to Building Permit Approval.
3. Boat ramp shall be limited to the use of property owners and tenants.
4. Boat ramp shall not to be used as a public ramp.
5. All boat ramps shall be located and designed so as not to create setback nonconformity for existing structures from the new mean high water line (MHWL) created by the boat ramp and all new structures permitted subsequent to boat ramp approval must meet the new setback from MHWL.
6. All boat ramps shall be confined to shorelines of man-made canals, channels, and basins with little or no native vegetation and shall be located in the least vegetated area of the shoreline.
7. The width of boat ramps, including side slopes, shall be limited to 35 feet. As proposed, the Applicant's ramp shall not exceed 11 feet in width.
8. A maximum of two accessory docks meeting all docking facility requirements may be allowed.
9. Boat ramps without accessory docks must meet the water depth and access criteria for a dock within ten (10) feet of the waterward end of the ramp to allow for a bottom slope.
10. Dredging and filling shall be limited to the minimum amount necessary to construct the boat ramp surface, side slopes, walls and mooring or dock pilings.
11. 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.
12. Native vegetation shall remain intact, except for the minimum area required for the boat ramp and, in this case the docks as approved by FDEP and the ACOE.
13. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

**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

\_\_\_\_\_  
George Garrett, Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
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 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 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 \_\_\_\_\_,  
this \_\_\_ day of \_\_\_\_\_, 2019.

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Diane Clavier, City Clerk



**CITY COUNCIL AGENDA STATEMENT**

**Meeting Date:** December 11, 2018  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

Agenda Item: Consideration of A Request By Holiday Inn Express & Suites For A Time Extension For Approvals Granted Pursuant To Resolutions 2014-105 And 2015-37 Pertaining To The Granting Of Twenty-Five (25) Transient Residential Units (TRUs) For A Project Approved By The City To Expand The Holiday Inn Express & Suites By A Total Of Twenty-Seven (27) Hotel Units Approved Pursuant To Resolutions 2014-61 And 2014-62 For A Conditional Use Permit And A Development Agreement Respectively; Providing That Said Conditional Use Permit And Development Agreement Were Approved For Time Extensions Pursuant To Resolutions 2017-47 And 2018-65; Providing That The Approval Of This Resolution Makes The Approved Time Frames For The Conditional Use Permit, Development Agreement And The Allocation Of Transient Residential Units (TRUs) Contemporaneous; Providing That Said Extension Request Is Issued For Property Which Is Legally Described As Part Of Government Lot 2, Fat Deer Key, Monroe County, Florida, Having Real Estate Numbers 00100260-000100 And 00100260-000102; And Providing For An Effective Date. Nearest Mile Marker 54.

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**BACKGROUND:**

It is the intent to rescind Resolution 2018-65 in favor of this Resolution in order to extend the HIE Development Agreement, make the term of the Conditional Use Permit contemporaneous with the Development Agreement, and to confirm that it is the intent to extend the term of Resolution 2014-105 to be contemporaneous with the term of the Development Agreement. The following conditions apply as originally established and clarified herein:

1. Rescind Resolution 2018-65
2. The development time line for the Conditional Use Permit originally memorialized in City of Marathon Resolution 2014-061 is hereby made contemporaneous with that of the Agreement memorialized in Resolution 2014-62 and does not “sunset” until the “sunset” date for that Agreement.
3. The duration and time line for the Agreement originally memorialized in Resolution 2014-62 is now established as follows:
  - a. All building permits must be obtained by July 10, 2019.
  - b. Certificates of Occupancy for all buildings permitted under the Development Agreement must be obtained by July 10, 2021.
4. So long as the Conditional Use Permit memorialized originally in Resolution 2014-61 and the Agreement memorialized originally in Resolution 2014-62 remain valid and in good standing with the City, then the twenty-five (25) Transient Residential Unit Allocations originally allocated and memorialized in Resolution 2014-105 remain associated with the Holiday Inn Express and Suites project approval, whether in original ownership or another owner.

The new Resolution is presented to satisfy the concerns of the new buyer for the project

CONSISTENCY CHECKLIST: Yes No

- 1. Comprehensive Plan
- 2. Other –Sewer Mandate

    X      
        

          
    X    

FISCAL NOTE:

NA

APPROVED BY FINANCE DIRECTOR:

NA

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**RECOMMENDATION:**

Approval

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2018-02**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST BY HOLIDAY INN EXPRESS & SUITES FOR A TIME EXTENSION FOR APPROVALS GRANTED PURSUANT TO RESOLUTIONS 2014-105 AND 2015-37 PERTAINING TO THE GRANTING OF TWENTY-FIVE (25) TRANSIENT RESIDENTIAL UNITS (TRUS) FOR A PROJECT APPROVED BY THE CITY TO EXPAND THE HOLIDAY INN EXPRESS & SUITES BY A TOTAL OF TWENTY-SEVEN (27) HOTEL UNITS APPROVED PURSUANT TO RESOLUTIONS 2014-61 AND 2014-62 FOR A CONDITIONAL USE PERMIT AND A DEVELOPMENT AGREEMENT RESPECTIVELY; PROVIDING THAT SAID CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT WERE APPROVED FOR TIME EXTENSIONS PURSUANT TO RESOLUTIONS 2017-47 AND 2018-65; PROVIDING THAT THE APPROVAL OF THIS RESOLUTION MAKES THE APPROVED TIME FRAMES FOR THE CONDITIONAL USE PERMIT, DEVELOPMENT AGREEMENT AND THE ALLOCATION OF TRANSIENT RESIDENTIAL UNITS (TRUS) CONTEMPORANEOUS; PROVIDING THAT SAID EXTENSION REQUEST IS ISSUED FOR PROPERTY WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2, FAT DEER KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00100260-000100 AND 00100260-000102.**

**WHEREAS**, pursuant to Resolutions 2014-61 and 2014-62, the City Council of the City of Marathon, Florida (the "City") approved a Conditional Use Permit and a Development Agreement (the "Agreement") for Holiday Inn Express & Suites ("Applicant"), copies of which are attached as Exhibits "A1" and "A2", and

**WHEREAS**, pursuant to Resolutions 2017-47 (Exhibit B) and 2018-65, the City has approved time extensions to the Conditional Use Permit and Agreement for the Applicant, copies of which are attached as Exhibits "B," and

**WHEREAS**, by Resolution 2014-105, the City Council of the City of Marathon, Florida (the "City") granted the Applicant Transient Residential Units (TRUs), a copy of which is attached as Exhibit "C", and

**WHEREAS**, By Resolution 2015-37, the use of the TRUs allocated pursuant to Resolution 2014-105, was extended for a period of six (6) months, a copy of which is attached as Exhibit "D"; and

**WHEREAS**, Resolution 2018-65 did not make it explicitly clear that, by its approval, the term of the use of TRUs had been extended as well; and

**WHEREAS**, the Applicant is requesting assurance that the time frame for the use of the TRUs authorized pursuant to Resolutions 2014-105 and 2015-37 run contemporaneous with the City's agreement to extend the terms of the Conditional Use Permit and Development Agreement,

**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 following represent the direction of the City Council:

1. Rescind Resolution 2018-65
2. The development time line for the Conditional Use Permit originally memorialized in City of Marathon Resolution 2014-061 is hereby made contemporaneous with that of the Agreement memorialized in Resolution 2014-62 and does not “sunset” until the “sunset” date for that Agreement.
3. The duration and time line for the Agreement originally memorialized in Resolution 2014-62 is now established as follows:
  - a. All building permits must be obtained by July 10, 2019.
  - b. Certificates of Occupancy for all buildings permitted under the Development Agreement must be obtained by July 10, 2021.
4. So long as the Conditional Use Permit memorialized originally in Resolution 2014-61 and the Agreement memorialized originally in Resolution 2014-62 remain valid and in good standing with the City, then the twenty-five (25) Transient Residential Unit Allocations originally allocated and memorialized in Resolution 2014-105 remain associated with the Holiday Inn Express and Suites project approval, whether in original ownership or another owner.

**Section 3.** This Resolution shall take effect immediately upon execution.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>th</sup> DAY OF JANUARY, 2019**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

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David Migut, City Attorney

EXHIBIT A1 & A2

RESOLUTIONS 2014-61 & 62  
DEVELOPMENT AGREEMENT FOR HOLIDAY INN EXPRESS  
(SH MARATHON LTD)  
Incorporated by reference here

EXHIBIT B

RESOLUTION 2017-47  
Incorporated by reference here

EXHIBIT C

RESOLUTION 2014-105  
Incorporated by reference here

EXHIBIT D

RESOLUTION 2015-37  
Incorporated by reference here

COUNCIL AGENDA STATEMENT



**Meeting Date:** January 8, 2019  
**To:** Honorable Mayor and Council Member  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

**Agenda Item:** Consideration Of A Request By Sapodilla Holdings, LLC, For A Conditional Use Permit And A Development Agreement Pursuant To Chapter 102, Articles 13 And 8 Of The City Of Marathon Land Development Regulations Entitled “Conditional Use Permit” And “Development Agreement” Respectively For The Redevelopment Of The Property Located At 7200 Aviation Boulevard As A Marina And RV Resort With 25 Spaces, Legally Described As, Part Of The Master Plat Of North Marathon Shores, Key Vaccas, Government Lot 1 Section 2 Government Lot 2 And Parts Of Government Lot 3 And The Southwest Quarter Of Section 1 Township 66 Range 32 E And Lots 18 Through 22 Schmitt Subdivision Key Vaca And Part Of Abandoned Aviation Boulevard, Having Real Estate Numbers 00328520-000000, 00328470-000000, 00328460-000000, And 00328450-000000, Providing For The Conditions And Requirements Of Development, Including, But Not Limited To Buffers, Building Heights, Setbacks, And Other Requirements.

**AND** Consideration Of A Variance Request To Allow For A Reduction In North And South Setbacks; Pursuant To Chapter 102, Article 20, Section 102.115, “Review And Approval Procedures”.

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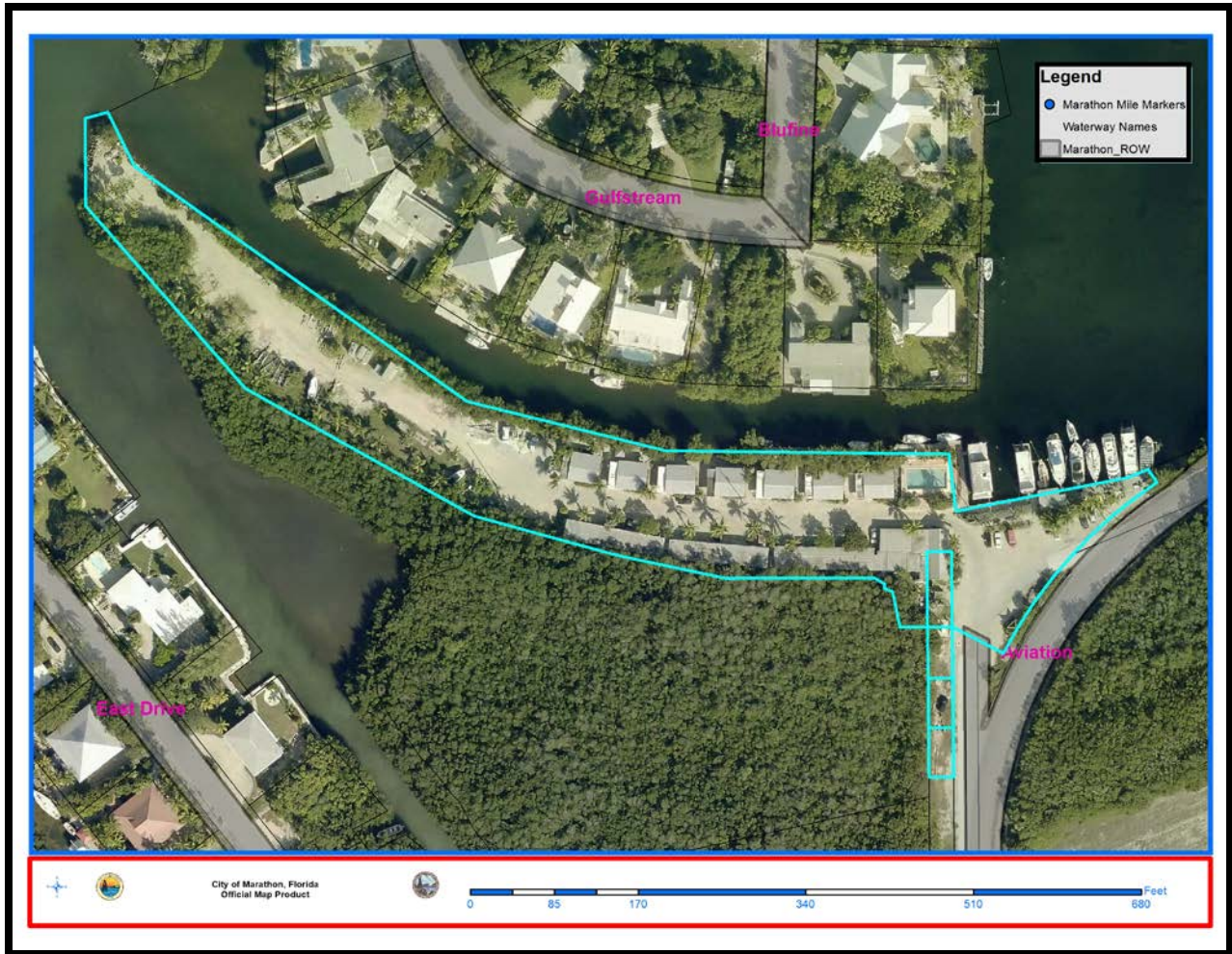
**APPLICANT/ OWNER:** Sapodilla Holdings LLC

**AGENT:** W. F. McCain & Associates, Inc.

**LOCATION:** The project site is located at 7200 Aviation Blvd nearest mile marker 50.5. See Figure 1.

**REQUEST:** A Variance approval and a Conditional Use Permit with a Development Agreement for re-development of the subject properties from a twenty-five (25) unit motel into a twenty-five (25) unit RV Park for properties having real estate numbers 00328520-000000, 00328470-000000, 00328460-000000, and 00328450-000000.

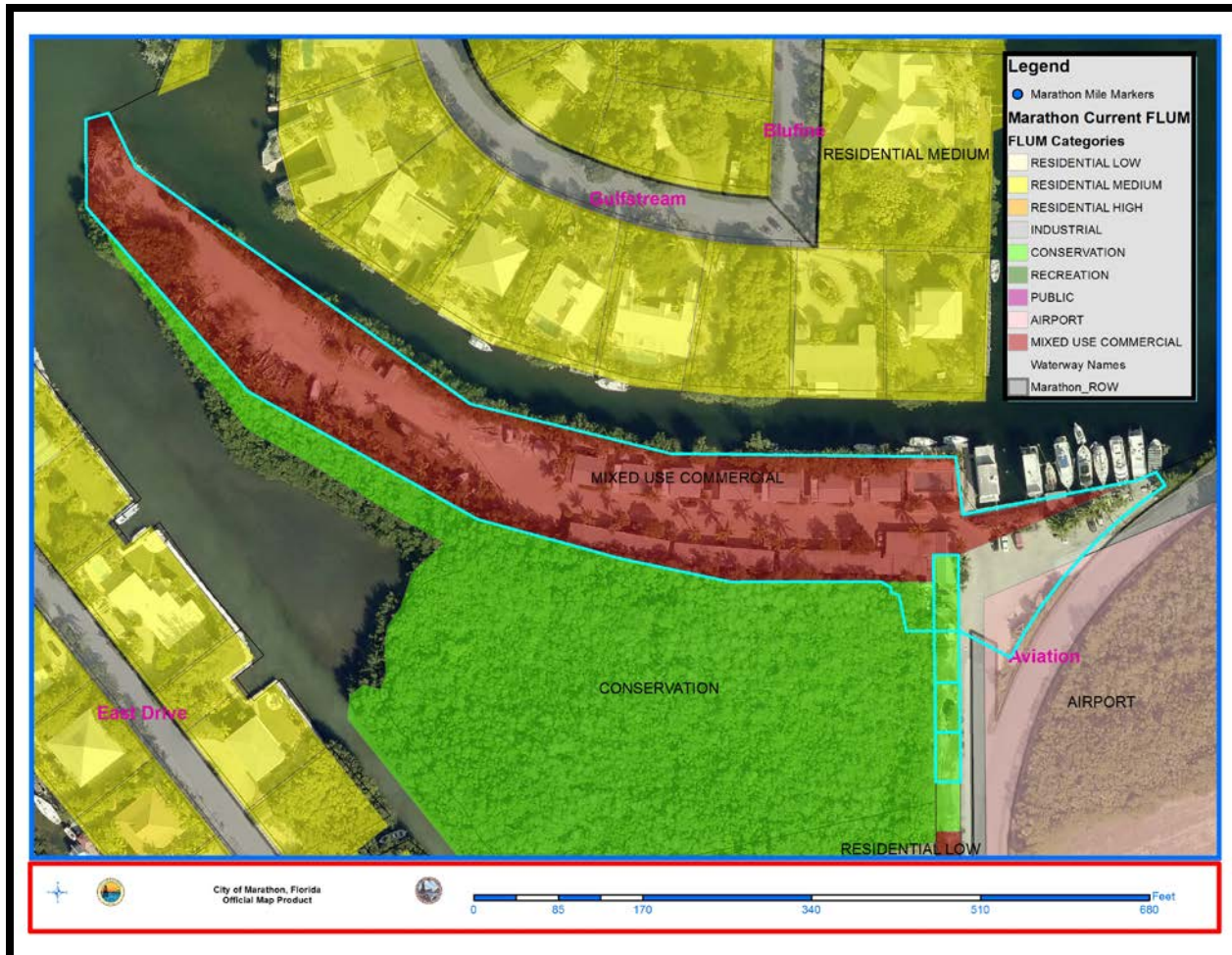
**Figure 1**  
**Project Site**





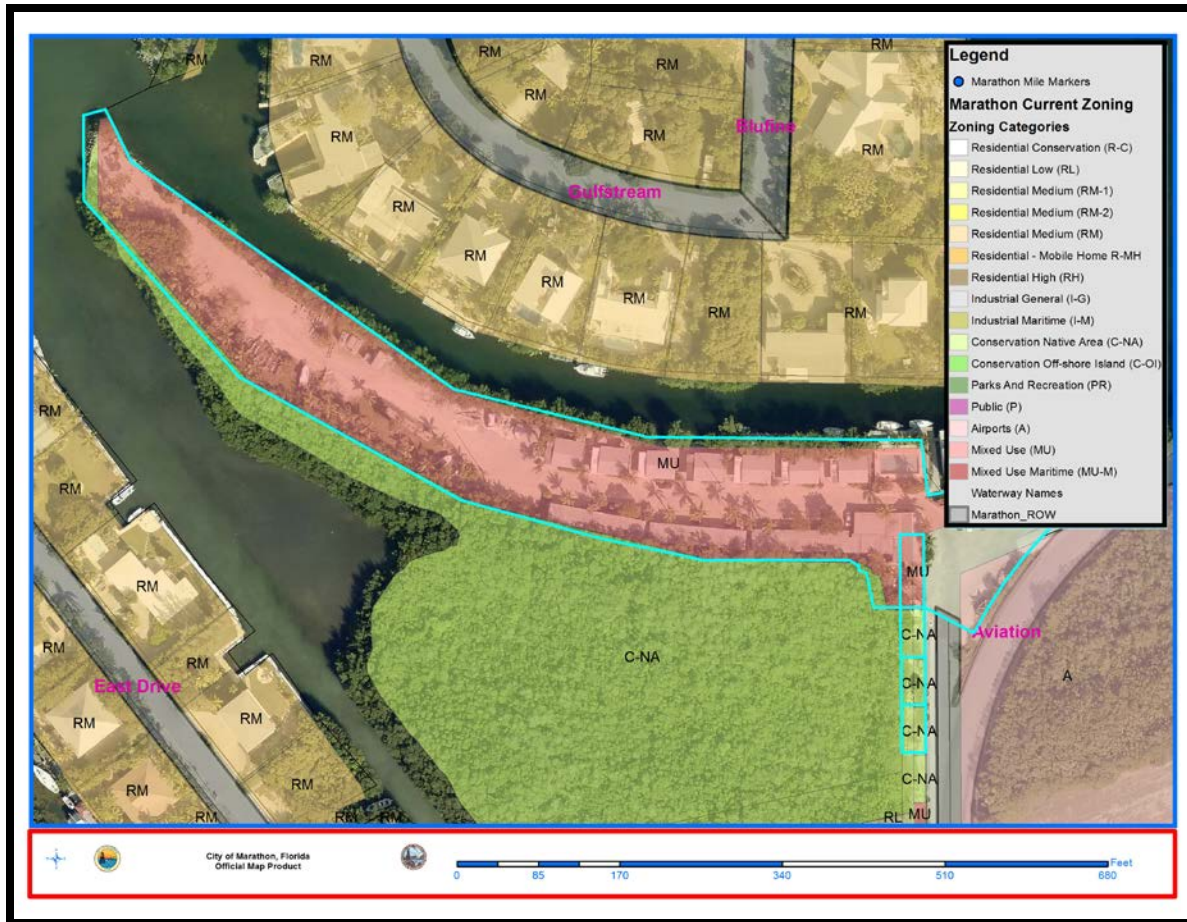
**FUTURE LAND USE MAP DESIGNATION:**  
Mixed Use Commercial (MU-C). See Figure 2.

**Figure 2**  
**Future Land Use Map**



**ZONING MAP DESIGNATION:**  
Mixed Use (MU). See Figure 3.

**Figure 3**  
**Zoning Map**



**LOT SIZE:**  
Total acreage: Approx. 132,278 square feet or 3.03 acres.

**SURROUNDING ZONING AND USES:**

	<u><b>Zoning</b></u>	<u><b>Use</b></u>
<b>North</b>	Residential Medium	Residential homes of Dodge Subdivision
<b>East</b>	Airport	Marathon Airport
<b>South</b>	CNA	Mangroves
<b>West</b>	Residential Medium	Residential homes of Roosevelt Point

**EXISTING CONDITIONS:**

The project site consists of four parcels. Cumulatively, these parcels are currently developed as the Coconut Cay Resort which operates as a twenty-five (25) unit motel mostly as month-to-moth rentals in combination with a twelve (12) slip marina.

**PROPOSED REDEVELOPMENT:**

RV Spaces:                    25 Units

Through the proposed variance to the north and south property lines, the developer proposes to redevelop the existing marina, refurbish the existing pool area, and develop a twenty-five (25) site RV park. The zoning district would allow for up to seventy-five (75) transient units. However, site constraints limit the potential of the site short of building three story hotel units. The developer holds twenty-five (25) transient entitlements as determined by previous staff and City Council.

**BACKGROUND:**

The proposed project is the development of commercial property to include construction of new transient RV unit sites in the Mixed Use zoning classification. This report addresses the Variance request and the Conditional Use / Development Agreement applications.

The Planning Commission heard this item on August 20, 2018 and provides a unanimous recommendation of approval for the Variance request (with conditions) and for the Conditional Use Permit with Development Agreement. Variance requests are typically reviewed by the Planning Commission solely. However, with a simultaneous request for a Conditional Use Permit and Development Agreement, the City Council has ultimate authority to grant all requests, including the Variance in this case.

The City Council considered this item on December 11, 2018. Accepting the approval of th6e Planning Commission for the variance, the City Council approved the requested variance with an additional condition that the City verify the legality of its authority to convey property associated with the project through Resolution 2005-093. Thus conditioned, if it were determined that the City did not have authority, in part or whole, to convey the property associated with the 2005 request to abandon property embodied in Resolution 2005-093, then the Conditional Use Permit and Development Agreement would become void. The Conditional Use Permit and Development Agreement was similarly approved by Council. Additional conditions were added requiring that an opaque barrier be placed within or at a perimeter of the buffer area on the north side of the property. Council also required that the project direct the egress of RVs to Aviation Boulevard and 107<sup>th</sup> Street, Ocean at U.S. 1.

Each approval for the project was granted with a 4/1 vote. As the Development Agreement requires two public hearings, the Conditional Use Permit review and proposed Development Agreement will be back before Council for final review on January 8, 2019.

**All conditions of the Conditional Use Permit approval will have to be met before any building permit will be approved.**

## **VARIANCE EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

This request is being evaluated in accordance with Section 102.120 and in context with the approved Conditional Use Permit. The criteria contemplated for a variance under other circumstances are “hardship” criteria.

The Applicant is requesting a variance to the setback requirements of ten (10) feet from both the north and south property lines. In addition, the applicant has sought a reduction in the width of required district and project boundary buffers to conform to their variance request.

On the north side the access road to the project will abut the required the setback area. To the south, the RV sites will abut the setback area separated by a stormwater berm and split rail fence.

To the south, the Applicant owns the property, but there is a setback requirement from the associated mangroves. To the north, there is a setback requirement from the water (the canal leading out of Dodge Lake). The water setback mirrors the required buffer yard setback between the zoning districts on opposite sides of the canal (MU vs RM). The shoreline along the Dodge Lake canal is approximately 850 feet long. For approximately 260 feet of this shoreline, the setback from the project access road to the water will be slightly less than ten (10) feet feet.

In review of the southerly boundary, the applicant owns the adjacent property. The project site plan proposes a stormwater berm between the RV site and the mangroves. In addition, the applicant proposes a fence to ensure that there are no impacts to adjacent mangroves. With these constraints, and the fact that the properties are in common ownership, staff reviewed this variance proposal favorably.

In staff’s review of the northerly boundary, the projects will meet a 10 foot required setback for the majority of the length of the project (approximately 610 feet). For the remainder of the project length (approximately 260 feet) the project will be slightly less than ten (10) foot setback. The actual distance from the shoreline to each RV site will be over thirty (30) with the interceding access road. Typically, a vegetative district boundary buffer is required between zoning districts. As there is an interceding water body in this case, the buffer may be limited with a corresponding increase in buffer vegetation density.

“The TRC may reduce the required buffer width by up to 50 percent where it can be shown by the applicant that the reduction is warranted by unique site features or characteristics. This would include, but is not limited to, situations where the buffer would be located adjacent to a waterbody or open space area or if a permanent buffer exists on the adjacent property.” (Section 107.70 A. 2. (c))

In requesting the setback variance, the applicant has agreed to provide the buffer at the required increased vegetative densities.

In accordance with Section 102.120 of the Code, staff has considered and determined the Applicant met the following criteria:

**A. *Special Circumstances:***

The project site is oddly shaped, and as such the setbacks from the wetlands and from the water restrict development along the majority of the length of the property.

**B. *Hardships:***

The existing motel on site was built in 1953. To redevelop transient uses on site and still provide safe access, to vehicles, RVs, and particularly emergency vehicles makes the site nearly impossible to redevelop without a variance.

**C. *No Detriment:***

The relief will not create a substantial detriment, as determined by the Director, to the public good, substantially impair affected natural resources, in the opinion of the biologist or impair the intent and purpose of the LDRs or applicable policies under which the variance is granted. The additional imposition of a conservation easement on the neighboring southerly parcel increases the ability to retain natural resources while still allowing effective use of the very narrow site.

**D. *No Special Privileges:***

The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated.

**E. *Use Authorized:***

An RV Park is a Conditional Use, and the Conditional Use application is addressed further in this staff report.

**F. *Relevant Factors:***

**1. Physical Characteristics of the proposed construction.**

The proposed construction is a graveled RV Park with wooden fence, and existing pool, dock, and other amenities.

**2. Whether the use of the property is dependent upon granting the variance.**

The redevelopment and use of the property is largely dependent on the granting of the variance. The property can continue to be used in its current format as a motel. However, any redevelopment of transient units requires a conditional use and site plan approval which would likely require variances regardless of the proposed use when both location of buildings and safe site access are considered.

**3. Whether granting the variance increases or decreases the danger to life and property.**

Granting the variance increases safe access to the site for emergency vehicles. This would be true for virtually any proposed development of the property which utilized its entire length in the redevelopment. The property is simply very narrow. The typical width of the property is approximately 115 feet. When you consider that an ideal road width would be a

minimum of twenty (20) feet and are the setbacks for both the south and north property lines, little space remains for RV spaces or buildings.

**4. The importance to the community of the services to be provided if the variance is granted.**

Policy 1-3.3.4 of the Comprehensive Plan directs the City to continue to maintain Land Development Regulations that provide incentives and encourage the redevelopment of existing resort and tourist facilities in the City.

**5. The compatibility of the proposed variance to the surrounding properties.**

The site currently has structures within the buffer areas. The redevelopment of the site will move the majority of the development and area for RVs or parked vehicles to the opposite side of the property from the canal.

**6. The ability to safely access the property by regular and emergency vehicles if the variance is not granted.**

The approval of the variance allows for the proposed development to meet fire access and turnaround standards. Without the proposed variance necessary fire access would not be possible for the entire length of the property.

**7. The costs of provided governmental services if the variance is or not granted.**

There are no foreseen costs with either granting or denying the variance.

**RECOMMENDATION:**

The Planning Commission recommended that approval of the variance be granted with the following conditions:

1. All conditions of the Conditional Use Permit approval shall be met.
2. A recordation of a 5' conservation easement on the project parcel running adjacent to the southerly wetland parcel.
3. Protection of the adjacent wetland parcel and 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 cover the entirety of parcel 00101260-000000. In lieu of this, the applicant may deed the Parcel over to the City of Marathon.
4. The required landscape buffers will be reduced with the approval of the variance. However, required landscape material (numbers of canopy trees, understory trees, shrubs, and groundcover) shall be maintained to approximately double the density of vegetation within the reduced buffer area.
5. If the variance is denied, then the Conditional Use Permit and Development Agreement should also be denied.

**CONDITIONAL USE PERMIT / DEVELOPMENT AGREEMENT EVALUATION FOR**

**COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:**

The criteria for evaluating a Conditional Use Permit & Development Agreement Approvals are outlined in Chapter 102, Articles 8 & 13, Development Agreement and Conditional Use Permits respectively, in the City of Marathon Land Development Regulations.

**CRITERIA**

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

The proposed redevelopment project is located within the Mixed Use (MU) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the 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 US1 Corridor, in an effort to recognize the role of US1 as the City of Marathon’s ‘Main Street.’ The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping center, specialty shopping centers, individual multi-tenant commercial buildings, automotive services and sales, fast food restaurants, affordable housing uses, transient lodging and other retail establishments that serve the community at large”.

The proposed project consists of the redevelopment of an existing commercial use and is consistent with the Mixed Use Zoning District. Section 103.15 establishes whether specific uses are allowed as of right, limited, accessory or conditional uses, through Table 103.15.2. That table shows that RV Resorts are allowed as Conditional Uses in the MU district. Conditional Use review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the RH district based on the types of uses proposed. The project as proposed meets the basic definition of development in the RH zoning district and meets the density constraints imposed on the type of proposed use. Using the property area, the proposed use can have up to 36 affordable units in consideration of a request to utilize the City’s density bonus for affordable housing projects. Note, there is a revised site plan indicating that the applicant is willing to modify density and site plan organization to alleviate the need for a variance as originally requested.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. The existing 25 units fall within the permitted transient rights per acre.

<b>Development Type</b>	<b>Existing</b>	<b>Proposed</b>
Transient Units	25	25

Therefore, 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;**

The proposed project 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 includes a redevelopment of an existing conditional use (hotel/motel/resort) into a similar conditional use, which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of a residential development to the north, residential uses to the west, and airport uses to the east, and the mangrove wetlands on the southern portion of the property.

The development of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, as well as a conservation easement for the adjacent wetlands. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

Therefore, 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 a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment. The project will provide a complete stormwater improvement plan, landscape buffering, and be connected to the City’s Area 5 sewer system.

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

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

- RV sites must remain transient.
- RVs must evacuate per the hurricane evacuation model as transient units.

**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 existing conditions maps indicate the subject area is designated as developed, and is bordered by mangroves. The mangroves surrounding the property are recognized as possible habitat for a state or federally listed animal species, the eastern indigo snake. Figure 4 shows that this area falls under the





property.

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

- The Planning Commission recommends that 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.
- A recordation of a 5' conservation easement on the project parcel running adjacent to the wetland parcel.
- Protection of the adjacent wetland parcel and 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 cover the entirety of parcel 00101260-000000. In lieu of this, the applicant may deed the Parcel over to the City of Marathon.
- The fence/wall separating the development from the wetlands should be 6' high measured from improved grade.

**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;**

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The "Trip Generation Analysis" schedule provided in the Traffic Study indicates that there will be a decrease in trip generation from the existing use to the proposed use for the RV Park. The traffic study was based upon 26 units. Using the formulas provided by the traffic engineers, the 25 unit development would generate 94 trips.

Ingress and egress to the properties is being provided through proposed access drives onto the existing Aviation Boulevard. Staff has previously looked at fair share impacts for development along this end of Aviation. As proposed, there is less of an impact than there currently is on site. As such, there is not an increased impact that the applicant has to account for.

Further, the developer will direct egress of RVs from the site to Aviation Boulevard leading to the light at 107<sup>th</sup> Street and U.S. 1, thus minimizing impacts to the Aviation / U.S. 1 intersection.

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

- Direction arrows and constraints to egress that direct RVs to 107<sup>th</sup> Street.
- Final site plans must show bicycle racks, as the property is adjacent to the Aviation bike path.

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

Parking requirements are outlined in Section 107.46 (Parking Schedule). The applicant proposes twenty-two (22) parking spaces, as well as two (2) spaces located at each RV spot (50 spaces), and two (2) handicap space. Seventeen (17) of the twenty-two (22) spaces are located directly off of Aviation Boulevard. Code requires one space for every RV space, and one space for every employee on the property. For the existing 12 live-aboard units, 1.5 spaces are required per slip for a total of eighteen (18) spaces. The project as proposed, exceeds the City's minimum parking requirements

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional and industrial uses, as well as all developments adjacent to a bike path, at a rate of one space for every ten parking spaces, per Section 107.48. The applicant must show the required bicycle spaces on the final site plan.

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

- Bicycle racks per Section 107.48 must be shown on the Final site plan prior to permit issuance.

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

The proposed project consists of the redevelopment of a commercial use. The proposed layout has the RVs pulling into the site facing the mangrove conservation area. This will reduce glare to those residential homes across the canal. Therefore, the proposed project should not have any adverse effect through noise, glare or odors. Increased native vegetation buffers along the shoreline will also reduce noise and glare.

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

**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 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:

- Wastewater: The applicant will provide wastewater and sewage collection and disposal via connection to the City sewer system.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However,

a final stormwater plan will be required for building permit issuance.

- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space. Additionally on site recreation facilities will be provided for residents and guests. Natural areas will be further protected with a conservation easement running in favor of the City.
- Roadways: The applicant is redeveloping the site with a lower intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

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.
- Individual sewer hookups are to be elevated above grade to minimize intrusion into sewer system.
- All piping is to be pressure rated per Airvac specs.
- Vacuum pits shall have individual breather assemblies and not candy canes.
- 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;**

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to south by properties zoned C-NA. There is a “high” project boundary buffer requirement for portions of the project area adjacent to parcels zoned C-NA. This is one the areas subject to the variance. The other area is on the north side of the canal, where the zoning is RM. Again, a “high” project boundary buffer is required. The same number of trees must be maintained, thus increasing the density of the final landscape plan. The final landscape plans must be approved by the City Biologist. Code states that the TRC can reduce the buffer in half, the applicant proposes 10’ setback along the northern property line. The applicant is proposing to reduce this with the above mentioned variance, and conservation easement. Staff is willing to allow a reduced setback if the density of vegetation within the buffers is increased to approximately double that required. Thus, the Applicant would be required to plant the same number of trees within the north buffer area as with the standard buffer. Existing trees along the canal can count towards the buffer requirement. The area of the buffer reduction is approximately 260 linear feet. The total approximately 850 linear feet of property will be buffered, it is just the smaller portion where the width is reduced. AAs provided below, the Technical Review Committee made a recommendation to the Planning Commission to allow a reduced project and district boundary buffer.

The TRC may reduce the required buffer width by up to 50 percent where it can be shown by the applicant that the reduction is warranted by unique site features or characteristics. This would include, but is not limited to, situations where the buffer would be located adjacent to a waterbody or open space area or if a permanent buffer exists on the adjacent property. (Section 107.70 A. 2. (c))

Buffer Type	Minimum Width	Canopy Tree	Understory Tree	Non-Deciduous	Shrub	Screening
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H-High	20 feet	10	5	5	30	Yes
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Section 107.71 C. requires that all commercial developments provide one of three types of buffers along the entire street frontage. The project is adjacent to Aviation Boulevard, therefore two canopy and two understory trees must be provided for every hundred linear feet of the portion of the property being developed.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 30'; side yards 10'; and rear setbacks have a 20' setback from the property line. Table 106.28.1 states that a 25' buffer is required for the setback from the wetlands. Code states that this buffer may be reduced to allow for up to 2,000 square feet of principal structure footprint of reasonable configuration if the buffer precludes all economically viable use of a particular property, development as defined in the F.S. 380.05, may be allowed within the buffer in accordance with Plan policy 4-1.4.2. The buffer does not preclude all economically viable use of the property.

This plan shows a 10' setback from the water, 5' setback from the mangroves and approximately 46' front setback.

Setback	Required	Required Landscape	Proposed	Compliant
Front	30	15	46	Yes
Water	20	NA	10	No
Mangrove	25	20	5	No

Section 107.66 of the Code requires parking area landscaping. Proposed parking area landscaping meets the standards set forth in the code.

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

- An approved variance is required for the setback reductions from the water and mangroves.
- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A dense planting buffer is required between the access drive and the canal.
- 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. Final lighting plans will be submitted along with final landscaping plans, and will include verification from the landscape architect that all provisions of the article are met.

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;**

Section 106.16 established required open space for the project. The scarified portion of the site requires a twenty percent open space requirement. According to calculations derived from the plans, the 20% open space is surpassed. The plans show that the proposed project amounts to 24% open space on site.

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

**9. General compatibility with surrounding properties;**

The project is a redevelopment of long standing existing use. Adjacent uses include the airport, and residences across the canal. A redevelopment of the existing motel/hotel/resort into a similar transient use is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The proposed structures do no exceed this height.

Therefore, 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 specific conditions in the LDRs pertaining to RV Parks. However, as stated above, variance approval is required prior to conditional use approval. If the variance is not approved, the conditional use should also not be approved.

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

**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 consists of the redevelopment of a transient use. As such the proposed

development concept, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is largely consistent with the Comprehensive Plan and Land Development Regulations. However, the reduced setbacks can only be considered to be compliant with the City's Comprehensive Plan and Land Development Regulations if a variance is approved. Since the project relies on a variance, the Conditional Use should only be approved if the variance is approved.

## **RECOMMENDATION:**

In the first public hearing for the project, the City Council approved the variance (as conditioned separately, the Conditional Use Permit and the Development Agreement applications with the following conditions and limitations.

### Conditions and Limitations of Approval

- 1) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) RV sites must remain transient and may not remain in the RV Park for a period exceeding 180 consecutive days.
- 4) RVs must evacuate per the hurricane evacuation model as transient units.
- 5) 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.
- 6) A recordation of a 10' conservation easement on the portion of the project parcel running adjacent to the wetland parcel at its southerly boundary.
- 7) The City further requires a conservation easement acceptable to the City on the adjacent wetland parcel.
- 8) 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 cover the entirety of parcel 00101260-000000. In lieu of this, the applicant may deed the Parcel over to the City of Marathon.
- 9) The fence/wall separating the development from the wetlands on the south side of the project should be 6' high measured from improved grade.
- 10) Directional arrows, signage, and physical constraints to egress must be designed and installed that direct RV egress to 107<sup>th</sup> Street.
- 11) Final site plans must show bicycle racks, as the property is adjacent to the Aviation Bike path.
- 12) Should it be found that inadequate on-site parking causes a recurring traffic hazard or a nuisance off-site, the owner shall be responsible for increasing the number of parking spaces or decreasing the need for parking spaces.
- 13) Bicycle racks per Section 107.48 must be shown on the Final site plan prior to permit issuance.
- 14) Final site plan must show screened dumpster enclosure prior to permit issuance.
- 15) In general, no generators shall be allowed in the use of any individual RV site.
- 16) City approval is required for the stormwater management system prior to Building Permit Approval.
- 17) City approval of the connection to the City Wastewater Utility will be required.
- 18) Individual sewer hookups are to be elevated above grade to minimize intrusion into sewer system

- 19) All piping is to be pressure rated per Airvac specs.
- 20) Vacuum pits shall have individual breather assemblies, and not candy canes.
- 21) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 22) An approved variance is required for the setback reductions from the water and mangroves.
- 23) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 24) A dense planting buffer is required between the access drive and the canal which meets all of the requirements of such a buffer regardless of the allowance for a setback variance from the canal.
- 25) Some form of opaque screening is required between the entire length of the project access drive and the canal to the north. Said structure must be approved by staff. It shall exist within the buffer area or at its boundary on one side or the other.
- 26) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 27) All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- 28) A final lighting plan must be submitted prior to permit issuance.





**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-03**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY SAPODILLA HOLDINGS, LLC FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS,” AUTHORIZING THE REDEVELOPMENT OF THE PROPERTY LOCATED AT 7200 AVIATION BOULEVARD AS A MARINA AND RV RESORT WITH 25 SPACES, LEGALLY DESCRIBED AS, PART OF THE MASTER PLAT OF NORTH MARATHON SHORES, KEY VACCAS, GOVERNMENT LOT 1 SECTION 2 GOVERNMENT LOT 2 AND PARTS OF GOVERNMENT LOT 3 AND THE SOUTHWEST QUARTER OF SECTION 1 TOWNSHIP 66 RANGE 32 E AND LOTS 18 THROUGH 22 SCHMITT SUBDIVISION KEY VACA AND PART OF ABANDONED AVIATION BOULEVARD, HAVING REAL ESTATE NUMBERS 00328520-000000, 00328470-000000, 00328460-000000, AND 00328450-000000. NEAREST MILE MARKER 51.**

**WHEREAS**, Sapodilla Holdings, LLC., (The “Applicant”) filed an Application on the 17<sup>th</sup> day of April, 2018 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop twenty-five (25) RV spaces; 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 Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 20<sup>th</sup> day of August, 2018, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of December, 2018 and the 8<sup>th</sup> day of January, 2019, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 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 and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS,** the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**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 2018-15, a copy of which is attached hereto as Exhibit “A”, granting a Conditional Use Permit to Sapodilla Holdings 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 by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>TH</sup> DAY OF JANUARY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk  
(City Seal)

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

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David Migut, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2018-15**

**A DEVELOPMENT ORDER APPROVING A REQUEST BY SAPODILLA HOLDINGS LLC FOR A CONDITIONAL USE PERMIT PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “CONDITIONAL USE PERMITS,” AUTHORIZING THE REDEVELOPMENT OF THE PROPERTY LOCATED AT 7200 AVIATION BOULEVARD AS A MARINA AND RV RESORT WITH 25 SPACES, LEGALLY DESCRIBED AS, PART OF THE MASTER PLAT OF NORTH MARATHON SHORES, KEY VACCAS, GOVERNMENT LOT 1 SECTION 2 GOVERNMENT LOT 2 AND PARTS OF GOVERNMENT LOT 3 AND THE SOUTHWEST QUARTER OF SECTION 1 TOWNSHIP 66 RANGE 32 E AND LOTS 18 THROUGH 22 SCHMITT SUBDIVISION KEY VACA AND PART OF ABANDONED AVIATION BOULEVARD, HAVING REAL ESTATE NUMBERS 00328520-000000, 00328470-000000, 00328460-000000, AND 00328450-000000. NEAREST MILE MARKER 51.**

**WHEREAS**, Sapodilla Holdings, LLC., (The “Applicant”) filed an Application on the 17<sup>th</sup> day of April, 2018 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop twenty-five (25) RV spaces; 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 Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 20<sup>th</sup> day of August, 2018, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of December, 2018 and the 8<sup>th</sup> day of January, 2019, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 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 and further, that the approval is in the

public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the purpose of the Conditional Use Permit is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**FINDINGS OF FACT:**

1. The applicant will redevelop twenty-five (25) unit RV Park, and accessory structures as may be appropriate.
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) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) RV sites must remain transient and may not remain in the RV Park for a period exceeding 180 consecutive days.
- 4) RVs must evacuate per the hurricane evacuation model as transient units.
- 5) 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.
- 6) A recordation of a 10' conservation easement on the portion of the project parcel running adjacent to the wetland parcel at its southerly boundary.
- 7) The City further requires a conservation easement acceptable to the City on the adjacent wetland parcel.
- 8) 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 cover the entirety of parcel 00101260-000000. In lieu of this, the applicant may deed the Parcel over to the City of Marathon.
- 9) The fence/wall separating the development from the wetlands on the south side of the project should be 6' high measured from improved grade.
- 10) Directional arrows, signage, and physical constraints to egress must be designed and installed that direct RV egress to 107<sup>th</sup> Street.
- 11) Final site plans must show bicycle racks, as the property is adjacent to the Aviation Bike path.
- 12) Should it be found that inadequate on-site parking causes a recurring traffic hazard or a nuisance off-site, the owner shall be responsible for increasing the number of parking spaces or decreasing the need for parking spaces.
- 13) Bicycle racks per Section 107.48 must be shown on the Final site plan prior to permit issuance.
- 14) Final site plan must show screened dumpster enclosure prior to permit issuance.
- 15) In general, no generators shall be allowed in the use of any individual RV site.
- 16) City approval is required for the stormwater management system prior to Building Permit Approval.

- 17) City approval of the connection to the City Wastewater Utility will be required.
- 18) Individual sewer hookups are to be elevated above grade to minimize intrusion into sewer system
- 19) All piping is to be pressure rated per Airvac specs.
- 20) Vacuum pits shall have individual breather assemblies, and not candy canes.
- 21) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 22) An approved variance is required for the setback reductions from the water and mangroves.
- 23) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 24) A dense planting buffer is required between the access drive and the canal which meets all of the requirements of such a buffer regardless of the allowance for a setback variance from the canal.
- 25) Some form of opaque screening is required between the entire length of the project access drive and the canal to the north. Said structure must be approved by staff. It shall exist within the buffer area or at its boundary on one side or the other.
- 26) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 27) All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- 28) A final lighting plan must be submitted prior to 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 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  
George Garrett, Director of Planning

This Development Order was filed in the Office of the City Clerk of this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
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 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 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 \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Diane Clavier City Clerk

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-04**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, APPROVING A REQUEST BY SAPODILLA HOLDINGS, LLC FOR A DEVELOPMENT AGREEMENT PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED “DEVELOPMENT AGREEMENT,” AUTHORIZING THE REDEVELOPMENT OF THE PROPERTY LOCATED AT 7200 AVIATION BOULEVARD AS A MARINA AND RV RESORT WITH 25 SPACES, LEGALLY DESCRIBED AS, PART OF THE MASTER PLAT OF NORTH MARATHON SHORES, KEY VACCAS, GOVERNMENT LOT 1 SECTION 2 GOVERNMENT LOT 2 AND PARTS OF GOVERNMENT LOT 3 AND THE SOUTHWEST QUARTER OF SECTION 1 TOWNSHIP 66 RANGE 32 E AND LOTS 18 THROUGH 22 SCHMITT SUBDIVISION KEY VACA AND PART OF ABANDONED AVIATION BOULEVARD, HAVING REAL ESTATE NUMBERS 00328520-000000, 00328470-000000, 00328460-000000, AND 00328450-000000. NEAREST MILE MARKER 51.**

**WHEREAS**, Sapodilla Holdings, LLC., (The “Applicant”) filed an Application on the 17<sup>th</sup> day of April, 2018 for a Development Agreement pursuant to Chapter 102, Articles 8 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop twenty-five (25) RV spaces; and

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

**WHEREAS**, on the 20<sup>th</sup> day of August, 2018, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

**WHEREAS**, and on the 11<sup>th</sup> day of December, 2018 and the 8<sup>th</sup> day of January, 2019, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS;** the City Council made a determination that the Applicant’s request for a Development Agreement, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with its policy to encourage the redevelopment of properties within the City of Marathon and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS,** the purpose of the Development Agreement is 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 and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

**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 the Development Agreement, attached hereto as “Exhibit A.”

**Section 3.** This resolution shall take effect immediately upon its adoption by the City of Marathon and after review and approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, *Florida Statutes*.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>TH</sup> DAY OF JANUARY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk  
(City Seal)

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

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David Migut, City Attorney

**EXHIBIT A**  
**DEVELOPMENT AGREEMENT**

**DEVELOPMENT AGREEMENT  
FOR  
COCONUT CAY RESORT AND MARINA**

**THIS AGREEMENT** is entered into by and between SAPODILLA HOLDINGS, L.L.C., a Florida limited liability company, (herein referred to as “Owner”), and the CITY OF MARATHON, a Florida municipal corporation (herein referred to as “City”), pursuant to Chapter 102, Article 8 of the Land Development Regulations (LDRs), and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2004), and is binding on the “Effective Date” set forth herein.

**WITNESSETH:**

**WHEREAS**, Sapodilla Holdings, L.L.C., a Florida limited liability company, is the Owner of approximately two point nine (2.9) contiguous acres of land (herein referred to as “Property”) in the corporate limits of the City of Marathon, Florida; and

**WHEREAS**, the Property is a fully developed site from the 1950s with dwelling units, amenities, and marina and is in need of redevelopment; and

**WHEREAS**, the Property contains many aging structures that are non-conforming to required codes; are below the required Federal Emergency Management Agency (“FEMA”) base flood elevation; are highly vulnerable in storm events, both structurally and due to elevation; and

**WHEREAS**, the Property presently has little erosion control or stormwater management system; and

**WHEREAS**, the City desires the redevelopment of such properties to enable aging tourist facilities to redevelop in a manner that is consistent with market trends in the leisure and hospitality industry for RV Parks such as proposed, as well as hotel / motel redevelopment; and

**WHEREAS**, the City of Marathon desires to encourage development and redevelopment of aging hotels and motels in the City to attract tourism, enhance the economy of the City for the benefit of its residents, improve the good appearance of the City, enhance the City's ability to support needed improvements in infrastructure, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon; and one of the City's enhancement and redevelopment goals are to attract 'family oriented' tourism and the Property offers the attractions of swimming, boating, and fishing that families enjoy; and

**WHEREAS**, in the past number of years, the City of Marathon has benefited from the economic success of other hotel/motel redevelopment projects and enhancements to its tourist economic base to assist in the City's economic recovery, growth, and continued vitality;

**WHEREAS**, the City needs economically feasible redevelopment of its existing tourist infrastructure to provide quality accommodations to attract the "family market" tourists to Marathon; and

**WHEREAS**, the City needs redevelopment to protect the environment, its citizens, its infrastructure and economy by redeveloping structures that are highly vulnerable in storm events, are below the required base flood elevations and are uninsurable; and

**WHEREAS**, the redevelopment contemplated by the Owner will remove existing structures and reconstruct structures in compliance with all applicable FEMA regulations, DOH regulations, applicable building codes, Land Development Regulations (LDR's) and the City Code; and

**WHEREAS**, as part of the Property redevelopment, the Owner will be required to connect to the City of Marathon Sewer System; and

**WHEREAS**, as part of the Property redevelopment, the Owner will obtain all required permits for and construct a stormwater management system to serve the Property, providing a substantial environmental benefit through retaining, detaining, treating, and managing stormwater runoff and eliminating the untreated discharge of storm water; and

**WHEREAS**, the proposed redevelopment is permissible and appropriate for the City's Comprehensive Plan Future Land Use designations of Mixed Use - Commercial applicable to the Property, which allow Hotel/Motel Use, and for the Suburban Commercial designation in the City's Comprehensive Plan adopted on March 8, 2005; and

**WHEREAS**, the Property is zoned Mixed Use; and

**WHEREAS**, the City has determined that the redevelopment will not adversely affect hurricane evacuation clearance time, as RV units are required to leave prior to the 24 hour required evacuation time, and as reflected in the traffic study as performed by Transport Analysis Professionals; and

**WHEREAS**, the Property is a highly disturbed, fully developed upland site which does not contain wetlands, listed species habitat, or other environmentally sensitive habitat, and therefore is an appropriate and preferred site to support redevelopment; and

**WHEREAS**, the proposed redevelopment will promote and further the following Principles for Guiding Development for the Florida Keys Area of Critical State Concern (the "Principles") as set forth in Section 380.0552(7), Florida Statutes (2004):

- (b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example,



tropical hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

(e) To limit adverse impacts of development on the quality of water throughout the Florida Keys.

...

(h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

...

2. Sewage collection and disposal facilities; and

**WHEREAS**, the City has held public hearings to accept and encourage public input with respect to the proposal by the Owner contained in this Agreement, and has considered such public input; and

**WHEREAS**, the Owner has provided public notice of the parties' intent to consider entering into this Agreement by publishing an advertisement in a newspaper of general circulation and readership in the City, posting the Property subject to this Agreement, and mailing notice to the persons and entities shown on the most recent Monroe County Tax Roll to be the Owner of property lying within 300 feet of the boundaries of the Property subject to this Agreement; and

**WHEREAS**, the City Planning Commission has held a public hearing on August 20, 2018, to consider this Agreement, and the City Council of the City has held public hearings on October 9, 2018, and November 13, 2018, to consider this Agreement; and

**WHEREAS**, the City has determined that this Agreement is consistent with the local comprehensive plan, is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Marathon.

**NOW, THEREFORE,** in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**A. RECITALS.** The recitals set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

**B. DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings. Terms not defined in this Agreement shall be as defined in the City Code, in Chapter 163, Florida Statutes, or, if not defined in the Code or statute, shall be understood by their usual and customary meaning.

**1. “Agreement”** shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the provisions of Sections 163.3220-163.3243, inclusive, Florida Statutes.

**2. “City Code”** shall refer to the Code of Ordinances of the City of Marathon in existence on the Effective Date of this Agreement.

**3. “Comprehensive Plan”** shall refer to the City’s Transitional Comprehensive Plan in existence on the Effective Date of this Agreement, except as otherwise expressly provided herein.

**4. “Development”** shall refer to the redevelopment of the Property for the uses permitted by the Land Use Plan and Land Development Regulations, subject to the conditions, obligations, restrictions and terms contained in this Agreement.

**5. “Transient Dwelling”** shall refer to the dwelling unit type defined in Chapter 108, Article 3 of the LDRs and defined in Florida Statutes 509.013(4)(a).

6. **“Effective Date”** shall refer to the date this Agreement becomes effective, as set forth in Section C.29 of this Agreement.

7. **“Florida Department of Economic Opportunity”** and **“state land planning agency”** shall mean and refer to the “state land planning agency” as defined in Chapter 163, Part II, Florida Statutes.

8. **“Land Use Plan”** shall mean the Future Land Use Element and Future Land Use Map of the City’s Transitional Comprehensive Plan in existence on the Effective Date of this Agreement, except as otherwise provided herein.

9. **“Land Development Regulations”** shall mean the LDRs in existence on the Effective Date of this Agreement.

10. **“Owner”** shall refer to the Owner of the Property subject to this Agreement.

11. **“Property”** shall refer to one or more of the parcels of real property located in the City that are the subject of this Agreement as set forth in \_\_\_\_\_ of this Agreement.

12. **“Public facilities”** means those facilities identified in Section 163.3221, Florida Statutes (2004), and as set forth in Section \_\_\_\_\_ of this Agreement.

**C. TERMS OF AGREEMENT.**

**1. Ownership, Legal Description, and Unity of Title.**

**a. Ownership.** The Owner of Coconut Cay Resort and Marina as of the date of execution of this Agreement is Sapodilla Holdings, L.L.C., a Florida limited liability company whose address is 7196 Overseas Highway, Marathon, Florida 33050. There are no

other legal or equitable owners of Coconut Cay Resort and Marina known to the parties of this Agreement.

**b. Legal Description.** The legal description of Coconut Cay Resort and Marina subject to this Agreement is included in the Coconut Cay Resort and Marina survey, attached hereto as Exhibit A. The term “Property” as used in this Agreement shall mean and refer to the properties described in Exhibit A.

**2. Duration of Agreement, Agreement Renewal.**

**a. Duration of Agreement.** This Agreement shall remain in effect for a period of seven (7) years, commencing on the Effective Date set forth below. Initial redevelopment of the site shall begin within One (1) year of the date of this agreement, including receipt of all necessary permits for demolition of existing units, installation of site infrastructure, and installation of RV sites..

**b. Agreement Renewal.** This Agreement may be renewed or extended as provided herein.

**3. Existing Development; Preparation for Redevelopment.**

**a. Existing Development.** The following development exists on the Property: seven (7) two bedroom cottages, eighteen (18) hotel/motel units for at total of 25 units with boat access, a waterside beach pavilion, a swimming pool with cabana bathrooms, pavilion and laundry, a twelve (12) slip live aboard marina, office and manager’s apartment.

**b. Redevelopment Preparation.** The Property will be prepared for redevelopment by permitted demolition and appropriate removal of all existing structures, except for the pool and marina area, which was recently renovated in 2002.

**4. Plan Approval, including Densities and Intensities.**

**a. Approval of Conceptual Site Plan; Minor Revisions; Final Site**

**Plan.** Redevelopment on the Property shall be twenty-five (25) RV sites, together with 200 feet of commercial space, and accessory structures and facilities as described in this Agreement and depicted on the Conceptual Site Plan for Coconut Cay Resort and Marina, dated April 17, 2018, which was prepared by W.F. McCain & Associates, Inc. of Vero Beach, Florida and are attached hereto as Exhibit B. The Conceptual Site Plan hereby approved by the City, and all subsequent site plans, site plan approvals and building permits shall substantially comply with this Conceptual Site Plan; provided, however, that the final site plan may deviate from the Conceptual Site Plan to accommodate: (1) refinements to the development plan including minor shifts in location; or (2) modifications that are necessary to meet regulatory requirements imposed by any other governmental entity. Except as provided herein, the setback, open space, landscape bufferyard, parking and building height requirements established in City Code shall not be varied. The development is approved contingent on the approval of ten (10) foot variances to the setbacks and buffer standards on the northerly and southerly property lines. A conservation easement of five feet will be required at the southerly property line and the entirety of the neighboring property shall be placed in a conservation easement. The buffer required on the northerly property line will require vegetation of approximately double normal densities (to include existing vegetation) pursuant to requirements of Section 107.70 2. (c) of the LDRs.

Pursuant to Resolution 2018-**XXX**, approving a Conditional Use Permit for the project approved herein, the following conditions apply at a minimum:

- 1) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 2) The applicant will meet all floodplain related requirements as part of the Building Permit process;
- 3) RV sites must remain transient and may not remain in the RV Park for a period exceeding 180 consecutive days.
- 4) RVs must evacuate per the hurricane evacuation model as transient units.
- 5) 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.
- 6) A recordation of a 10' conservation easement on the portion of the project parcel running adjacent to the wetland parcel at its southerly boundary.
- 7) The City further requires a conservation easement acceptable to the City on the adjacent wetland parcel.
- 8) 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 cover the entirety of parcel 00101260-000000. In lieu of this, the applicant may deed the Parcel over to the City of Marathon.
- 9) The fence/wall separating the development from the wetlands on the south side of the project should be 6' high measured from improved grade.
- 10) Directional arrows, signage, and physical constraints to egress must be designed and installed that direct RV egress to 107<sup>th</sup> Street.
- 11) Final site plans must show bicycle racks, as the property is adjacent to the Aviation Bike path.
- 12) Should it be found that inadequate on-site parking causes a recurring traffic hazard or a nuisance off-site, the owner shall be responsible for increasing the number of parking spaces or decreasing the need for parking spaces.
- 13) Bicycle racks per Section 107.48 must be shown on the Final site plan prior to permit issuance.
- 14) Final site plan must show screened dumpster enclosure prior to permit issuance.
- 15) In general, no generators shall be allowed in the use of any individual RV site.
- 16) City approval is required for the stormwater management system prior to Building Permit Approval.
- 17) City approval of the connection to the City Wastewater Utility will be required.
- 18) Individual sewer hookups are to be elevated above grade to minimize intrusion into sewer system
- 19) All piping is to be pressure rated per Airvac specs.
- 20) Vacuum pits shall have individual breather assemblies, and not candy canes.
- 21) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 22) An approved variance is required for the setback reductions from the water and mangroves.
- 23) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.

- 24) A dense planting buffer is required between the access drive and the canal which meets all of the requirements of such a buffer regardless of the allowance for a setback variance from the canal.
- 25) Some form of opaque screening is required between the entire length of the project access drive and the canal to the north. Said structure must be approved by staff. It shall exist within the buffer area or at its boundary on one side or the other.
- 26) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 27) All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- 28) A final lighting plan must be submitted prior to permit issuance.

**b. Dwelling Units under this Agreement.** Chapter 102, Article 23 of the Land Development Regulations, the 25 transient dwelling units on the Property are exempt from the requirements of the City's BPAS.

**c. Density under this Agreement.** Pursuant to the LDRs of the City Code and any applicable provisions in the City's Comprehensive Plan which was adopted on January 11, 2005, Owner is entitled to redevelop up to twenty-five (25) TRU entitlements.

**d. Conceptual Site Plan.** The redevelopment of 25 TRU entitlements as RV sites on the Property as depicted on the Conceptual Site Plan, is approved by this Agreement.

**e. Structures.** The redevelopment depicted on the Conceptual Site Plan, and listed below, is approved by this Agreement. Exhibit B, incorporated by reference herein, depicts the approximate location of RV sites and accessory buildings.

**f. Commercial Floor Area Approved Under This Agreement.** Pursuant to Chapter 102, Article 23 of the LDRs, the Owner is vested to reconstruct a total of 634 square feet of commercial floor area or non-residential development on the Property, without being subject to nonresidential BPAS requirements. Total commercial floor area redevelopment

on the Property approved by this Agreement is 634 square feet, as depicted on the Conceptual Site Plan. This commercial redevelopment will be used as accessory uses to the dwelling unit redevelopment of the Property. The areas will serve as entry facilities for incoming RVs utilizing the RV Park.

**g. Accessory Uses.** Accessory uses, to be developed as amenities ancillary to the RV sites constructed as part of the redevelopment on the Property, are for the use of Coconut Cay Resort and Marina Owner and guests. Signage shall be erected to indicate that accessory uses are for Coconut Cay Resort and Marina Owners and guests. Accessory uses to be developed or redeveloped on the Property are the office, activities pavilion, pool and pool pavilion, and restrooms and showers for residents of the marina.

**5. Development Conditions.** The following conditions, terms, restrictions, and other requirements have been determined by the City of Marathon to be necessary for the public health, safety, and welfare of its citizens:

**a. Building Height.** Buildings may be constructed to the maximum height as provided in the Comprehensive Plan, or to the maximum height allowed under the City's Comprehensive Plan adopted on March 8, 2005, whichever may be applicable at the time of building permit application submittal.

**b. Setbacks.** The City acknowledges that there is no undisturbed or unaltered shoreline on the Property. Pursuant to Chapter 106,28 Water Resource and Wetland Buffers, a twenty (20) foot setback from the mean high water line ("MHWL) for which a variance has been granted pursuant to Resolution 2018-118. The same Section establishes provisions for a limited amount of non-enclosed detached outdoor recreational accessory structures that may be



developed within the shoreline setback. Pursuant to City Code/Land Development Regulations, Chapter 103, Article 3 establishes that the Mixed Use district requires a minimum 5 foot side yard setback on one side property line with a combined total of 15 feet for both side yards. With the recordation of the 'Unity of Title', internal setbacks are not required other than for fire safety.

**c. Utilities, Lighting, and Signage.** Utilities, lighting, and signage shall comply with all applicable requirements of the City Code, including the waterfront lighting criteria in Chapter 107, Article 6 and elsewhere in the LDRs . The Owner shall install all utilities underground where practicable and shall screen all utility facilities. The Owner shall utilize shaded light sources to illuminate all signs, facades, buildings, parking and loading areas, and shall arrange such lighting to eliminate glare to parcels lying outside the Property. No intermittent or flashing lights or flashing signs shall be allowed.

**d. Landscaping.** The Owner shall utilize best installation and maintenance practices for landscaping throughout the Property, and shall guarantee one hundred percent (100%) survival of all owner-installed plants for one (1) year. Seventy percent (70%) of all required plants installed shall be Florida Keys native plants that are suitable for the site conditions and are a species typical of the Middle Keys. The Owner shall remove all Category I invasive exotic plants on the Property. The Owner shall provide all required landscaping in accordance with Chapter 107, Article 8 of the LDRs.

**e. Parking.** The redevelopment shall comply with the parking criteria as required by Chapter 107, Article 6 of the LDRs. The Owner shall provide no fewer than one (1) parking spaces per dwelling unit, a total of 11 (eleven) parking spaces for the marina live-aboard slips, and 9 (nine) onsite guest parking spaces for a total of 62 parking spaces.

**f. Entrance Street Improvements.** Owner shall provide the following entrance street improvements:

(i) The installation and maintenance of landscaping on the side of Aviation Boulevard bordering the Property; and other improvements.

(ii) Provided Owner is granted the vacation of right-of-way for the right-of-way for the old Aviation Boulevard, Owner shall provide adequate traffic circulation and other features as agreed by the City.

**g. Internal Infrastructure.** The underground infrastructure, water and sewer serving the dwelling units shall be completed before a certificate of occupancy may be issued for the unit.

**h. Fire Safety.** The Owner shall provide fire wells and other such fire protection facilities as required by the Life Safety Code administered by the City Fire Department. Fire sprinklers will be installed in all dwelling units.

**i. Open Space Ratio.** Pursuant to Chapter 106, Article 9 a minimum of 20% open space is required. The Owner will maintain a minimum of 20% open space, unless otherwise provided under applicable provisions of the City's Comprehensive Plan adopted on March 8, 2005.

**j. Wind Load.** The Owner shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the Building Code.

**k. Energy Efficiency.** The Owner shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

**l. Schematics.** All redeveloped residential units constructed on the Property shall adhere to one of the architectural styles and one of the representative floor plans depicted in the schematics in Attachment 1, incorporated by reference herein.

**m. Permits from Other Regulatory Entities.** The Owner shall obtain all necessary permits from other local, regional, State and federal regulatory entities and provide copies of each to the City within a reasonable time after such permits are issued. A log of the permits and approvals required for the Project and the status of each is incorporated herein by reference.

**n. Compliance with Mixed Use District Requirements.** The proposed redevelopment complies with the Conditional Use permitting requirements in the Mixed Use land use district as provided in the City Code and in applicable Comprehensive Plan provisions.

**o. Storm water Management.** The development shall comply with the storm water management criteria in Chapter 107, Article 11 and as ultimately must be approved by the SFWMD.

**p. Additional Conditions by Mutual Agreement.** Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual written consent, during the final permitting approval process.

**6. Public Utilities; Concurrency, Impact Fees.** The following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

**a. Potable Water.** Domestic potable water is provided by the Florida Keys Aqueduct Authority.

**b. Electric Service.** Electric service is provided by Florida Keys Electric Cooperative.

**c. Solid Waste.** Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

**d. Fire Service.** Fire service is provided by the Marathon Fire Department.

**e. Concurrency.** All public facilities identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development.

**f. Wastewater.** Wastewater treatment shall be provided by permitted hookup to City Of Marathon Central Sewer system as required.

**g. Public Recreational facilities.** Public recreational facilities shall be addressed through impact fees, if any.

**h. Impact Fees.** Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to the

City, concurrent with the issuance of the building permits for each unit, of any City impact fees required by Ordinance then in effect, as well as by payment by the Owner of any applicable utility system development fees.

**i. Traffic Study.** The Applicant has completed a traffic study which indicates a reduction in traffic from that currently associated with the site. However, redevelopment of the Coconut Cay Resort and Marina may result in some traffic impacts at Aviation Boulevard and U.S. 1 above those generated by the development currently existing on the Property, Owner will mitigate its fair share of the increased traffic impacts resulting from redevelopment of the Coconut Cay Resort and Marina.

**7. Reservations or Dedications of Land for Public Purposes.** The parties anticipate that the Owner may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement, but are currently unaware of the specifics of such reservation(s) or dedication(s). Such reservations or dedications may include, by way of example, easements necessary for the provision of storm water, utility, and wastewater services to the Property.

**8. All Local Permits Approved or Needed.**

**a. Development Approvals.** The following City development approvals are needed for the development authorized by this Agreement:

**1. Site Plan.** Final site plan approval by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

**2. Conditional Use.** A Conditional Use Approval shall be received from the City of Marathon, prior to the receipt of building permits.

**3. Transient Residential Units not in possession by Sapodilla Holdings, LLC / Coconut Cay Resort.** The Applicant shall obtain twenty (20) transient residential units (TRUs) in excess of what has been legally established on the parcels, to be transferred onto the property via the Transfer of Building Rights (TBR's), Conditional Redevelopment Units (CRU's), or any other legally established process prior to building permit issuance. **THE GRANTING OF THIS CONDITIONAL USE DEVELOPMENT ORDER DOES NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY TRANSIENT DEVELOPMENT RIGHTS OR UNITS.**

**3. Building Permits.** Building permits will be issued for each building as well as for the pool facilities and pavilion, and other individual structures. An overall site Plan as approved by the City of Marathon, will address landscaping, parking, paths, setback, open space and other associated items.

**b. Review.** No further review or discretionary review will be required by the City, it being agreed that the development, as depicted on the approved Conceptual Site Plan attached hereto, requires only the above development approvals so long as the final site plan substantially complies with the Conceptual Site Plan approved under this Agreement.

**c. Compliance.** Nothing in this Agreement shall be deemed to obviate the Owner's compliance with terms and provisions of each such identified approval.

**d. Completeness.** The parties acknowledge that the Owner has submitted all information necessary for review under the City Code.

**9. Mutual Cooperation.** The City agrees to cooperate with the Owner in a timely manner in providing and/or granting all permits, licenses, approvals, or consents necessary or appropriate to fully implement this Agreement. The City and the Owner agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

**10. Development to Comply with Permits and City Transitional Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the Comprehensive Plan and City Code in effect on the date of execution of this. No certificate of occupancy for an individual building shall be issued until the City approves all plans for that building and the Owner has complied with all conditions in the permit issued by the City and other regulatory entities for that building.

**11. Finding of Consistency.** The City of Marathon finds that the development authorized herein is consistent with the Comprehensive Plan and Land Development Regulations, and with the City's Comprehensive Plan adopted on March 8, 2005, as applicable.

**12. Compliance with Permits, Terms, Conditions, and Restrictions not identified herein.** The failure of this Agreement to address a particular permit condition, term, or restriction shall not relieve the Owner of the necessity of complying with the laws governing said permitting requirements, conditions, terms, or restrictions.

**13. Governing Laws.**

**a. Controlling Regulations.** For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code or the City's Comprehensive Plan adopted on March 8, 2005, as applicable. The parties do not anticipate the application of subsequently adopted laws and policies to the Property except as expressly provided in this Agreement.

**b. Subsequently Adopted Laws and Policies.** Pursuant to Section 163.3233, Florida Statutes (2004), the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement; (c) the local government demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by the Owner. Redevelopment of the Property shall not be subject to any moratoria or other restrictions on redevelopment, which may be established or otherwise imposed in any manner or at any time by the City. Nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

**c. State or Federal Laws.** If State or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this



Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

**14. Amendments, Renewal, Revocation and Termination.** This Agreement may be amended, renewed, or terminated as follows:

**a. Amendments.** As provided in Section 163.3237, Florida Statutes (2004), this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

**b. Renewal.** As provided in Section 163.3229, Florida Statutes (2004), this Agreement may be renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes (2004): the City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement; the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

**c. Termination by Owner.** This Agreement may be terminated by the Owner or their successor(s) in interest following a breach of this Agreement, upon written notice to the City as provided in this Agreement.

**d. Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2004), this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a failure to comply with the terms of this Agreement.

**e. Termination by Mutual Consent.** This Agreement may be terminated by mutual consent of the parties.

**15. Breach of Agreement and Cure Provisions.**

**a. Written Notice on the Owner.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement the City shall serve written notice on the Owner, identifying the term or condition the City contends has been materially breached and providing the Owner ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the Owner, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Marathon or other regulatory entity for the development authorized by this Agreement.

**b. Written Notice on the City.** If the Owner concludes that there has been a material breach in the terms and conditions of this Agreement, the Owner shall serve

written notice on the City, identifying the term or condition the Owner contends has been materially breached and providing the City thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

**c. Option to Terminate.** If a material breach of this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

**d. Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

**16. Notices.** All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

**TO THE OWNER:**

James Rhyne,  
Managing Member  
157 Sapodilla Drive  
Islamorada, FL 33036

**With a copy by regular U.S. Mail to:**

**TO THE CITY:**

Chuck Lindsey, City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033

**With a copy by regular U.S. Mail to:**

David Migut, City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033

**17. Annual Report.** On the anniversary date of the Effective Date of this Agreement, the Owner shall provide to the City a report identifying: (a) the amount of development authorized by this Agreement that has been completed; (b) the amount of development authorized by this Agreement that remains to be completed; and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

**18. Enforcement.** In accordance with Section 163.3243, Florida Statutes (2004), any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes (2004), or the state land planning agency may file an

action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2004).

**19. Binding Effect.** This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

**20. Assignment.** This Agreement may not be assigned without the written consent of the parties.

**21. Drafting of Agreement.** The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

**22. Severability.** In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

**23. Applicable Law.** This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

**24. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** In the event of any litigation arising out of this Agreement between the City and Owner, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to,

reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

**25. Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

**26. Duplicate Originals; Counterparts.** This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

**27. Headings.** The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of the Agreement.

**28. Entirety of Agreement.** This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

**29. Recording; Effective Date.** The Owner shall record this Agreement in the public records of Monroe County, Florida, within twenty-eight (28) days after the date of execution of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within a reasonable time days after the Agreement is recorded. The Owner shall also provide a copy of the recorded Agreement to the City within the same time period. This Agreement shall become effective thirty (30) days after the date it is recorded in the public records of Monroe County, Florida, and received by the state land planning agency.

**30. Date of Agreement.** The date of this Agreement is the date the last party signs and acknowledges this Agreement.

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have set their hands and seals on the dates below written.

SAPODILLA HOLDINGS, L.L.C.  
a Florida limited liability company,

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Managing Member

STATE OF FLORIDA  
COUNTY OF DADE

The foregoing instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_ 2018, by \_\_\_\_\_ as President of Sapodilla Holdings, L.L.C. who is personally known to me or who produced \_\_\_\_\_ as identification, and who did/did not take an oath.

\_\_\_\_\_  
Notary Public, State of Florida At Large

My commission expires:

CITY OF MARATHON

\_\_\_\_\_  
Date

By \_\_\_\_\_  
JOHN BARTUS, MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

\_\_\_\_\_  
CITY ATTORNEY



**EXHIBITS TO COCONUT CAY RESORT AND MARINA  
DEVELOPMENT AGREEMENT**

**EXHIBIT A  
Legal Description**

**EXHIBIT B**  
**CONCEPTUAL SITE PLAN**

## COUNCIL AGENDA STATEMENT



**Meeting Date:** January 8, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Planning Director

**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-01**, Amending Chapter 102, Article 15, "Temporary Placement Permits;" Chapter 103, Article 3, Section 103.15, Table 103.15.1, "Uses By Zoning District;" And Chapter 104, Article 1, Section 104.55, "Temporary Placement,' Of The City Code Of Ordinances, To Provide Minor Modifications To Allowances For The Temporary Placement Of Recreational Vehicles, Motor Homes, Mobile Homes, Or Other Temporary Residential Units After The Impact Of A Hurricane Or Other Natural Disaster; Providing For The Repeal All Ordinances Or Parts Of Ordinances Found To Be In Conflict, And Providing For Inclusion In The Code Of Ordinances; And Providing For An Effective Date

### **BACKGROUND:**

Based on issues raised by a number of residents concerning the limitations placed on Temporary Placement Permits, the City Council requested that staff draft a proposed revision to the Temporary Placement Permit section of the Land Development Regulations allowing a broader ability to place temporary structures under the Temporary Placement Permit Guidelines.

The proposed Ordinance modifies three areas of the Code – 102.82 & 102.83, 103.15 (Table 103.15.2), and 104.55:

- The proposed Ordinance adds additional zoning districts within which a Temporary Placement Permit may be issued – RL-C, RL, I-G, I-M, P, and PR.
- The Ordinance provides for the issuance of Temporary Placement Permits in Nonresidential Zoning Districts and on public properties under limited circumstances.
- The Ordinance provides for Temporary Placement Permits within existing RV and Mobile Home Parks providing greater flexibility about such permits, but also additional clarity about the conditions for such placement.
- Finally, the Ordinance more specifically recognizes the need for Temporary Placement Permits for agencies such as FEMA for or for the City which may wish to provide locations to house out-of-City contractors helping with the recovery efforts.

The Draft document has been placed in Ordinance form with the Council's direction to move forward with its adoption. The document in front of you works from the existing Ordinance found in Chapter 102, Article 15 of the Land Development Regulations, placing it in "underline / strikethrough" format.

The Planning Commission reviewed the proposed Ordinance on December 17, 2018. The Planning Commission requested some clarification of intent and verbiage concerning Section 102.83 3., but otherwise approved the Ordinance unanimously. Requested clarifications were made.

**CONSISTENCY CHECKLIST:**

	Yes	No
1. Comprehensive Plan	_____	<u>  X  </u>
2. Other –Sewer Mandate	_____	<u>  X  </u>

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**RECOMMENDATION:**

The Planning Commission reviewed the proposed Ordinance revision on December 17, 2018 and provides a unanimous recommendation of approval for its adoption.

**Sponsored by: Lindsey**  
**Introduction Date: August 20, 2018**  
**Public Hearing Dates: December 17, 2018**  
**January 8, 2019**  
**Enactment date: January 22, 2019**

**CITY OF MARATHON, FLORIDA**  
**ORDINANCE 2019-01**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 102, ARTICLE 15, “TEMPORARY PLACEMENT PERMITS;” CHAPTER 103, ARTICLE 3, SECTION 103.15, TABLE 103.15.1, “USES BY ZONING DISTRICT;” AND CHAPTER 104, ARTICLE 1, SECTION 104.55, “TEMPORARY PLACEMENT,’ OF THE CITY CODE OF ORDINANCES, TO PROVIDE MINOR MODIFICATIONS TO ALLOWANCES FOR THE TEMPORARY PLACEMENT OF RECREATIONAL VEHICLES, MOTOR HOMES, MOBILE HOMES, OR OTHER TEMPORARY RESIDENTIAL UNITS AFTER THE IMPACT OF A HURRICANE OR OTHER NATURAL DISASTER; PROVIDING FOR THE REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT, AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

**WHEREAS**, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting business regulations for the protection of the public; and

**WHEREAS**, the Planning Commission reviewed this Ordinance on December 17, 2018 providing a unanimous recommendation of approval to the City Council with no proposed changes; and

**WHEREAS**, the City Council reviewed this Ordinance on January 8, 2019 and again on January 22, 2019 adopting the Ordinance in its second hearing and directing staff to transmit the Ordinance to the Florida Department of Economic Opportunity for final approval; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** Amend Chapter 102, Article 15, Temporary Placement permits, to read as follows:

CHAPTER 102, DEVELOPMENT APPLICATION PROCEDURES

ARTICLE 15. - TEMPORARY PLACEMENT PERMITS

An application for a temporary placement permit (TPP) shall be submitted in accordance with Article 2, "Common Development Application Elements", of this Chapter.

Section 102.82. - Temporary Placement of Manufactured or Mobile Homes.

A. Temporary Placement Permitted: A recreational vehicle, motor home, ~~or~~ mobile home, or other temporary residential unit, may be permitted on a limited basis by the issuance of a temporary placement permit (TPP) by the Department.

B. Removal of Temporary Home: Unless otherwise provided in this article, ~~a manufactured home or a mobile home~~ recreational vehicle, motor homes, or mobile home, or other temporary residential unit, permitted by a TPP shall be removed from the site within ~~60~~ 30 days after ~~completion of the activity~~ issuance of either a final inspection or Certificate of Occupancy associated with the approved permit, or at the time of the expiration of the TPP, whichever is earlier.

Section 102.83. - Types of Temporary Placement Permits.

A TPP may be granted as indicated below:

A. Emergency Residence:

1. Emergency Residence Permitted : Within any Residential Zoning District (R-C, RL, RM, RM-1, RM-2, RH, R-MH), A TPP may be issued for the purposes of providing an emergency residence for displaced owner-occupants or tenants on a site where the existing living unit(s) has (have) become uninhabitable due to adverse weather damage or other acts of God, Habitability of the existing residential unit(s) shall be as determined by an inspection by the City building official, Florida certified building inspector, architect, or engineer, ~~due to adverse weather damage or other acts of God,~~ The TTP shall only be allowed while the damaged living unit is being repaired or a replacement living unit is being constructed (Section 102-82 B above).

2. Placement on Nonresidential and Public Properties: A TPP may be approved for displaced owner-occupants or tenants of lawfully-established dwelling units to

**place a recreational vehicle on all properties in nonresidential land use districts and on public lands, excluding lands designated for conservation and resource protection.**

**(a) If larger properties are to be rented or leased to Agencies or entities providing multiple unit emergency housing, then such rentals/leases shall be made with the approval of the City's Executive Committee under an Emergency Declaration or by the City Council as is most expeditious.**

**3. Placement in Existing RV/Mobile Home Parks Zoned R-MH: A TPP may be approved for displaced owner-occupants, tenants, or other displaced residents of lawfully-established permanent (market rate) dwelling units to place a recreational vehicle, travel trailer, or other temporary residential unit on all properties in Residential-Mobile Home (R-MH) land use districts.**

**(a) If RV / Mobile Home spaces or fee-simple lots are to be rented or leased to Agencies or entities providing emergency housing, then such rentals/leases shall be made with the approval of the Mobile Home Park in question and with the knowledge and approval of the City's Executive Committee under an Emergency Declaration or by the City Council as is most expeditious.**

**(b) The City's Executive Committee or its City Council, as appropriate, may approve such areas as identified in (a) for the placement of workforce housing for those individuals who have come to the City for the purposes of assisting in clean-up or recovery efforts post storm impact.**

**3.4. Restrictions:**

**(a) ~~Placement on Nonresidential and Public Properties: A TPP may be approved for displaced owner-occupants or tenants of lawfully-established dwelling units to place a recreational vehicle on all properties in nonresidential land use districts and on public lands, excluding lands designated for conservation and resource protection. No more than one RV, mobile home, travel trailer, or other temporary housing unit shall be allowed per residential unit made uninhabitable.~~**

**(b) Tie-down and Contractor Required: Placement of all temporary housing on a site must meet all State requirements for tie-downs. Mobile homes shall be installed by a licensed mobile home contractor and in accordance with requirements of Florida Statutes and the Florida Building Code.**

**(c) Maximum Period of Time: A TPP shall ~~not~~ be issued for a period of six (6) months. Time extensions may be granted by the City's Executive Committee or City Council as appropriate, in increments of six (6 months for a cumulative total time period not to exceed time in excess of eighteen (18) months from the date of the declaration of emergency or until the final inspection or issuance of Certificate of Occupancy, whichever comes first. A TPP shall remain in effect only as long as the building permit is valid.**

**(d) Validity of Temporary Placement Permit: The holder of the TPP shall apply for a ~~no fee~~ building permit for the damaged dwelling unit no later than six (6) months after the date of the declaration of emergency; noncompliance may result in revocation of the TPP.**

(e) Hurricane Evacuation: Occupants of the temporary housing must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the TPP.

**3.5.** Submission Requirements:

- (a) Completed TPP application; and
- (b) Map or other documentation indicating the proposed location of the temporary housing unit; and
- (c) State Department of Health or State Department of Environmental Protection permit authorizing the connection of the temporary housing to an on-site or existing community wastewater treatment system.

**4.6.** Administrative Relief: If the applicant is unable to apply for a building permit for the repair or replacement of the damaged non-transient dwelling unit within the required time limit, the applicant may apply, at no cost, to the Council for administrative relief from the provision of Subsection 2.(d) above.

**B.** Construction and Sales and Leasing Office:

- 1. Office, Sales and Leasing Permitted: A manufactured home meeting the requirements of the Building LDRs may be utilized as a temporary construction office or a sales and leasing office on a construction site for which a building permit has been issued. The location of such temporary office shall be shown on the approved site plan.
- 2. Restrictions:
  - (a) Single-family Dwelling: A TPP for an office of this nature shall not include a construction project which is limited to the building of only one (1) single-family residential structure.
  - (b) Use as a Living Quarters: A construction office shall not be used as a living unit.
  - (c) Validity of Temporary Placement Permit: A TPP for an office of this nature may be issued for a period not to exceed one (1) year, and may be renewed by the Department as long as the project is under active construction, development and sales or leasing. The temporary unit shall be removed within 90 days after construction is completed.



**SECTION 3.** Amend Chapter 103, Zoning Districts, Article 3, Use and Intensity Tables, to read as follows:

CHAPTER 103, ZONING DISTRICTS

ARTICLE 3 – USE AND INTENSITY TABLES

Section 103.15, Table 103.15.1. Uses By Zoning District

Uses in bold have specific conditions listed in Chapter 104																
Zoning Districts	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M	I-G	I-M	A	P	PR
***																
Temporary Placement			<b><u>P</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>LP</u></b>	<b><u>P</u></b>	<b><u>P</u></b>	<b><u>P</u></b>	<b><u>P</u></b>	<b><u>P</u></b>
***																

**SECTION 4.** Amend Chapter 104, Specific Use Regulations, Article 1, General Provisions to read as follows:

CHAPTER 104 SPECIFIC USE REGULATIONS,

ARTICLE 1 - GENERAL PROVISIONS

[Section 104.55.] - Temporary Placement.

Temporary placements of recreational vehicles, motor homes, ~~or~~ mobile home, **or other temporary residential unit**, may be permitted pursuant to Table 103.15.1 on a limited basis provided the conditions in [Article 15](#) of [Chapter 102](#) are met.

**SECTION 5.** The provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 6.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION 7.** It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**SECTION 8.** The provisions of this Ordinance constitute a “land development regulation” as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 9.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 22<sup>nd</sup> DAY OF JANUARY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

---

Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney



COUNCIL AGENDA STATEMENT

Meeting Date: January 8, 2019

To: Honorable Mayor & Members of the City Council

From: Daniel Saus, Utilities Director

Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-05**, Modifying the City’s Wastewater Rate Policy to include an Alternative Water Supply Customer rate; Authorizing The City Manager To Administer Wastewater Rate Implementation Accordingly; And Providing An Effective Date

**BACKGROUND & JUSTIFICATION:**

With the adoption of Ordinance 02-07-12 and Ordinance 2008-10 (the “Ordinances”), which establish a Wastewater Utility and authorizes, by City Council resolution, the imposition of fees, charges, and procedures as appropriate to the construction, operation, and maintenance of the wastewater system. The City Council has the ability to establish classifications and rates as required for use and maintenance of the system.

The existing Wastewater Utility Rate Schedule, adopted by Resolution 2018-99 (Exhibit “A”), with the adoption of this Resolution the City Council will create a new classification of user know as Alternative Water Supply Customer.

Staff recommends creation of a new classification of Alternative Water Supply Customers at a monthly rate of \$64.46. This includes both base and flow charges. This classification will not be assessed flow charges based on water meter readings as with other classifications. This classification will be subject to annual rate indexing which may or may not be implemented by the City Council in the future.

**CONSISTENCY CHECKLIST:**

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	<u>X</u>	___
3. Not applicable	___	___

**FISCAL NOTE:**

Approval of this resolution will establish rates for sewer service for customers that are not connected to the FKAA water supply.

**RECOMMENDATION:**

Approval of Resolution.

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-05**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, MODIFYING THE CITY'S WASTEWATER RATE POLICY TO INCLUDE A NEW CLASSIFICATION FOR ALTERNATIVE WATER SUPPLY CUSTOMERS; AND AUTHORIZING THE CITY MANAGER TO ADMINISTER WASTEWATER RATE IMPLEMENTATION ACCORDINGLY; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council of the City of Marathon, Florida (the "City") enacted Ordinance 02-07-12 and Ordinance 2008-10 (the "Ordinances"), which establish a Wastewater Utility and authorizes, by City Council resolution, the imposition of fees, charges procedures as appropriate to the construction, operation and maintenance of the wastewater system;

**WHEREAS**, the City enacted Resolution 2009-60 establishing a Wastewater Utility Rate Schedule Exhibit "A"; and

**WHEREAS**, the City Council desires to add a classification of Alternative Water Supply Customers to the Wastewater Utility Rate Schedule Exhibit "A" for the City's Wastewater Utility.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

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

**Section 2.** This resolution is adopted pursuant to the provisions of Ordinance No. 02-07-12, Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

**Section 3.** The City shall add the classification of Alternative Water Supply Wastewater Customers to the Wastewater Utility Rate Schedule Exhibit "A". This classification is not assessed volumetric charges.

**Section 4.** This resolution establishes the Alternative Water Supply Wastewater Customers a fixed charge of \$64.46 per month as shown on Exhibit "A" attached. This rate shall be indexed whenever other classifications receive an index adjustment.

**Section 5.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APROVED BY THE CITY COUNCIL OF THE CITY OF  
MARATHON, FLORIDA, THIS 8<sup>TH</sup> DAY OF JANUARY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

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Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney

EXHIBIT "A"

**Monthly Rates for Wastewater Service**

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	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Base Facility Charge (per Month):</b>		
<b>Individually–Metered Residential</b>	<b>\$36.33</b>	<b>\$37.25</b>
<b>All Other Customer Classes (Amount per EDU)</b>		
<b>Per Customer</b>	<b>\$14.33</b>	<b>\$14.33</b>
<b>Plus Capacity Charge per EDU</b>	<b>\$22.00</b>	<b>\$22.92</b>
<b>Volumetric Charge (per 1,000 Gallons of Metered Water Service):</b>		
<b>Individually-Metered Residential Service – Maximum Monthly Bill of 12,000 gallons</b>	<b>\$8.12</b>	<b>\$8.12</b>
<b>All Other Classes of Service – All Metered Water Usage</b>	<b>\$8.12</b>	<b>\$8.12</b>
<b>Alternative Water Supply Customer (per month)</b>	<b>N/A</b>	<b>\$64.46</b>

COUNCIL AGENDA STATEMENT



Meeting Date: January 8, 2019  
To: Honorable Mayor & Members of the City Council  
From: Dan Saus, Utilities Manager  
Through: Charles Lindsey, City Manager

Agenda Item: **Resolution 2019-06**, Approving A Contract for Liquid Sludge Hauling and Disposal Services To Biosolids Distribution Services, LLC In The Amount Of \$75,000.00; Authorizing The City Manager To Execute The Contract And Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City of Marathon (the “City”) issued an Invitation to Bid (ITB) for “Liquid Sludge Hauling and Disposal Services,” (the “Project”) on November 8, 2018, with sealed bids opened and publicly read on December 6, 2018 at 11:30 AM at City Hall.

The Bid Tabulation attached as Exhibit “A-1” lists the responses from Bidders. City staff, consisting of the Utilities Director and the Utilities Coordinator, have reviewed the four (4) bid submittals. Biosolids Distribution Services, LLC submitted the lowest responsive and a responsible bid for the work as shown on Exhibit “A” in the amounts of \$0.17 per gallon for both Item #1 and Item #2. The proposed bid award and subsequent contract will provide the City with liquid sludge disposal services when required. The recommended total contract amount for FY18/19 is \$75,000.00.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other – 2010 Sewer Mandate	<u>X</u>	___
3. Not applicable	<u>X</u>	___

FISCAL NOTE:

The FY19 Wastewater budget includes appropriations of \$102,000 for sludge hauling services

RECOMMENDATION: Approval of Resolution.

## EXIHIBT "A-1"

Sludge Hauling, Bid results December 6, 2018, 11:00 AM

                     = unresponsive

	Item #1 Price	Item #2 Price	bid form	addendums	qual statement	Anti Kickback	Non-Collusion	Public Entinty Crimes	licenses	Certified Corp. Resolution	Drug-Free Workplace
Mike Haack Excavating, Inc.	\$ 0.27	\$ 0.65	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Greentech Group Solutions, LLC	\$ 0.20	\$ 0.35	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Biosolids Distribution Services, LLC	\$ 0.17	\$ 0.17	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3rd Generation Plumbing, Inc.	\$ 0.26	\$ 0.34	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes



**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-06**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A CONTRACT FOR “LIQUID SLUDGE HAULING AND DISPOSAL SERVICES” TO BIOSOLIDS DISTRIBUTION SERVICES, LLC IN THE AMOUNT OF \$75,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the “City”) issued an Invitation to Bid (ITB) on November 8, 2018 for “Liquid Sludge Hauling and Disposal Services”, (the “Project”); the bids were read aloud at City Hall on December 6, 2018 at 11:00 AM; and

**WHEREAS**, the lowest bid that was found to be responsive and responsible was received from Biosolids Distribution Services, LLC in the amount of \$0.17 per gallon for both Bid Items #1 & #2; and

**WHEREAS**, the City staff wish to enter into a new Liquid Sludge Hauling and Disposal Services Contract, which will enable the City to have its liquid sludge hauled and properly disposed of for FY 18/19;

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

**Section 1.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** The contract attached hereto as Exhibit “B”, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney is hereby approved. The City Manager is authorized to sign the Contract and expend budgeted funds 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 8<sup>th</sup> DAY OF JANUARY, 2018**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

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David Migut, City Attorney

## **EXHIBIT “B”**

### **CITY OF MARATHON LIQUID SLUDGE HAULING & DISPOSAL SERVICES**

THIS CONTRACT (the “Contract”) is dated this XXX day of XXX by and between the CITY OF MARATHON, FLORIDA (hereinafter called the “CITY”) and Biosolids Distribution Services, LLC (hereinafter called “Contractor”) located at 4050 Dundee Rd. Dundee, Florida 33838.

The City and Contractor in consideration of the mutual covenants hereinafter set forth, and subject to the terms and conditions herein stated, the parties agree as follows:

**1. Effect/Scope of Work.**

The Contractor shall furnish all Work as specified in the Contract Documents. The work is generally described as liquid sludge removal and disposal services for the City’s wastewater facilities or other locations as needed in the City of Marathon limits. Therefore, all work and associated compensation shall be made under the terms, conditions and prices of this Contract and with the Contractor’s bid as specified herein.

**2. Contractor Performance.**

If Contractor fails to perform according to the requirements of this Contract, City shall notify Contractor in writing. Should the Contractor fail to correct the problem within three (3) calendar days, the City may take further action up to termination.

**3. Compensation/Payment.**

- a. Contractor shall submit copies of all receipts and other documentation supporting lawful disposal of liquid sludge for each deposit. Contractor shall provide City the name and location of the final destination and disposal facility prior to commencement of Work and within five (5) calendar days of any changes. The City shall be provided with copies of receipts from the disposal facility for each deposit.
- b. Contractor shall provide the City with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month. Invoice shall contain copies of documentation for all solid waste disposal, sludge disposal and preventative maintenance log.
- c. The Contractor shall be compensated at the unit prices specified on Exhibit C based upon the actual Work completed for the month.
- d. The City shall make payment of said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished.

**4. Contract Amendment.**

Change Order means a document, which is signed by Contractor and City, and authorizes an addition, deletion or revision in the Scope of Work, or an adjustment in compensation or contract time, issued on or after the effective date of the Contract.

**5. Term.**

This Contract shall be effective upon execution by both parties. This Contract shall remain in effect for two years from the date of execution unless terminated earlier in accordance with this Contract. The City Manager may, at his/her sole option, extend this Contract on the same terms and conditions for two additional one year term extensions by written notice delivered at least sixty (60) days prior to termination of this Contract.

**6. Contractor's Responsibilities.**

- a. The Contractor has carefully examined the Scope of Work; the area for the Work contemplated on the Invitation to Bid and has made sufficient investigations to fully satisfy himself as to site conditions, and assumes full responsibility for all related Scope of Work.
- b. The Contractor agrees to coordinate all Work with City's wastewater plant operator or designee.
- c. The Contractor shall maintain applicable license(s) and provide City with all license renewals within ten (10) calendar days of expiration date.
- d. Contractor shall secure and pay for all tipping fees, licenses, insurances and inspections necessary for the execution of the Work. Upon termination of this Contract for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the City.
- e. The Contractor hereby certifies its capability of performing all required Work including clean-up from City premises in a neat and timely manner immediately following completion of Work. Contractor agrees to leave City premises in the same or better condition as provided.
- f. The Contractor shall operate the centrifuge equipment using methods that will minimize odor and noise within the limits and capabilities of the City's wastewater facilities. The Contractor agrees that the Work shall be performed in such a manner as to provide a minimum of inconvenience and odors to any neighboring community residing in the area. Any debris or other material spilled shall be immediately removed, cleaned and treated with hydrated lime or other method including the area and surrounding area acceptable to the City.

- g. The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this contract as follows:
1. The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the premises, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety and Health Act of 1970, and amendments thereto, the Construction safety Act of 1969, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed.
  2. The Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this contract.
  3. The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights, protective devices and danger signals on or near the Work, signage, barricades, or indication of other hazards and obstructions to traffic, and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.
  4. The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the City and of any land adjoining any work sites, which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or sludge, and shall take all necessary or directed steps, to protect all property. The same care shall be exercised by all Contractor's and subcontractor's employees.
  5. Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street

monuments, etc., prior to impacting and shall be held strictly liable to the affected utility if any such appurtenances are disturbed, damaged or covered up during the course of the Work.

- h. Contractor agrees that the Work will be primarily performed between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. Emergency work may also be required.

**7. Vehicles and Equipment.**

Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Contract. All vehicles used by Contractor to provide services under this Contract shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public and as required by FDOT.

**9. Insurance.**

- a. The Contractor shall secure and maintain throughout the duration of this Contract, insurance of such type and in such amounts necessary to protect its interest and the interest of the City against hazards or risks of loss as specified below (as described in Exhibit “B”). The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers, and naming the City as an additional insured.

**10. Certificate of Insurance.**

Contractor shall provide the City Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Contract and shall state that such insurance is as required by this Contract. The City reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the City. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days’ written notice shall be provided to the City before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the City Manager.

**11. Additional Insured.**

- a. The City is to be specifically included as an Additional Insured for the liability of the City resulting from operations performed by or on behalf of Contractor in performance of this Contract. Contractor’s insurance, including that applicable to the City as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute to Contractor’s insurance. Contractor’s insurance shall contain a severability of

interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

- b. All deductibles or self-insured retentions must be declared to and be approved by the City Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

**12. Assignment and Amendment.**

No assignment by the Contractor of this Contract or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Contract without prior written approval of the City Manager. This Contract may only be amended by the parties with the same formalities as this Contract.

**13. Non-Waiver.**

The approval, and/or acceptance of any part of the Work by the City shall not operate as a waiver by City of any other terms and conditions of the Contract.

**14. Indemnification.**

- a. Contractor hereby agrees to indemnify, defend and hold harmless the City, and City's officers and employees from liabilities, damages, losses and costs (including, but not limited to, reasonable attorney's fees at any level) on account of or relating to the Work, the bid, any resulting contract or acts related thereto, and whether caused in whole or part by the negligence or fault of City, or otherwise.
- b. The provisions of this INDEMNIFICATION are solely for the benefit of the Contractor and City and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- c. This indemnification obligation shall survive the termination of this Contract.

**15. Ownership and Access to Public Records.**

15.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Contractor providing services to the City under this Agreement shall be the property of the City.

15.2 The Consultant is a "Contractor" as defined by Section 119.0701(1)(a), Florida Statutes, and shall comply with the public records provisions of Chapter 119, Florida Statutes, including the following:

- 1. Keep and maintain public records required by the City to perform the service.
- 2. Upon request from the City Clerk, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
  4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City Clerk, in a format that is compatible with the information technology systems of the City.
- 15.3 "Public Records" is defined in Section 119.011(12), Florida Statutes, and includes all documents, papers, letters, photographs, data processing software, or other material, regardless of physical form, made or received in connection with this Agreement.
- 15.4 Should the Contractor assert any exemption to the requirements of Chapter 119 and related law, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Consultant.
- 15.5 The Contractor consents to the City's enforcement of the Consultant's Chapter 119 requirements by all legal means, including, but not limited to, a mandatory injunction, whereupon the Consultant shall pay all court costs and reasonable attorney's fees incurred by the City.
- 15.6 The Contractor's failure to provide public records within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Further, such failure by the Consultant shall be grounds for immediate unilateral cancellation of this Agreement by the City.
- 15.7 **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-743-0033, [CITYCLERK@CI.MARATHON.FL.US](mailto:CITYCLERK@CI.MARATHON.FL.US), OR 9805 OVERSEAS HIGHWAY, MARATHON FLORIDA 33050.**

**16. No Assignment.**

Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of the City Manager. Any such assignment without prior approval shall be void ab initio.



**17. Applicable Law.**

Contractor shall be solely responsible for and shall comply with all federal, state and local laws regarding the Work required hereunder.

**18. Termination.**

- a. Either party may terminate this Contract without cause upon 30 days written notice to the other party.
- b. Upon notice of such termination, the City shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.
- c. After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Contract, and shall do so on the date specified in the notice of termination.
- d. The City may terminate this Contract upon five (5) days written notice if the Contractor defaults on any material term of this Contract.

**19. Choice of Law.**

This Contract shall be governed by the laws of the State of Florida. Venue shall lie in Monroe County. This Contract and all actions thereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Contract shall be brought in Monroe County, Middle Keys Division, Florida or U.S. Southern District Court.

**20. Waiver of Jury Trial and Venue.**

The City and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Contract and arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

**21. Attorneys' Fees.**

If either the City or Contractor is required to enforce the terms of this Contract by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees together with court costs incurred in any litigation at any trial and appellate proceedings.

**22. Severability.** Should any provision, paragraph, sentence, word, or phrase contained in this document be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.

**23. Counterparts.**

This Contract may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

**24. Notices.**

Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

*For City:*

Charles Lindsey  
City Manager  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050  
Telephone: (305) 743-0033  
Facsimile: (305) 289-4123

*For Contractor:*

Name / Title	_____
Firm	_____
Address	_____
City, State Zip	_____
Telephone:	_____
Facsimile:	_____

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: \_\_\_\_\_  
**Diane Clavier, City Clerk**

By: \_\_\_\_\_  
**Charles Lindsey, City Manager**

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

By: \_\_\_\_\_  
**David Migut, City Attorney**

Signed, sealed and witnessed in the presence of:

As to Contractor:

By: \_\_\_\_\_  
Witness

By: \_\_\_\_\_  
President



COUNCIL AGENDA STATEMENT

Meeting Date: January 8, 2019  
To: Honorable Mayor and City Councilmembers  
From: Carlos A. Solis P.E., Director of Public Works & Engineering  
Through: Chuck Lindsey, City Manager

Agenda Item: **Resolution 2019-07**, Accepting The Ranking And Recommendation Of The City’s Evaluation Team For Playground Equipment At Sombrero Beach; Authorizing The City Manager And City Attorney To Negotiate A Contract With The Top Ranked Firm Of Legacy Construction Services Group, Inc In The Amount Of \$133,000.00; And Providing For An Effective Date.

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**BACKGROUND & JUSTIFICATION:** The City has long thought to upgrade the older playground equipment at Sombrero Beach. Hurricane Irma damaged the older equipment and as a result the City requested proposals for the work with points delegated for cost, layout, material, and experience in the area. Three proposals were received, and the evaluation team ranked the proposals based on the criteria. The following is the ranking of the three submittals:

1. Legacy Construction Services, Inc.
2. Playmore Recreation Products
3. Bliss Products and Services.

Staff recommends that the Council accepts the ranking and authorize the City Manager to execute a contract with the highest ranked company.

<u>CONSISTENCY CHECKLIST:</u>	Yes	No
1. Comprehensive Plan	XX	___

**FISCAL NOTE:**  
The FY19 Capital Infrastructure budget includes appropriations of \$70,000 for new playground equipment, and \$1,392,588 for the Sombrero Beach Irma recovery project (PW9494 obligated by FEMA and the State of Florida) with a cost estimate for the playground equipment of \$74,865 not including the mulch or borders.

**RECOMMENDATION:** Council approve Resolution

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-07**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, ACCEPTING THE RANKING AND RECOMMENDATION OF THE CITY'S EVALUATION TEAM IN RESPONSE TO AN RFQ FOR PLAYGROUND EQUIPMENT AT SOMBERO BEACH; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AND ENTER INTO A CONTRACT WITH THE TOP RANKED FIRM OF LEGACY CONSTRUCTION SERVICES GROUP INC. IN THE AMOUNT OF \$133,000; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") published a Request for Qualifications (RFQ) for playground equipment at Sombrero Beach (the "Project"); and

**WHEREAS**, the City Manager established an "Evaluation Team" consisting of City Staff to review, evaluate and rank qualifications packages in accordance with the RFQ criteria; and

**WHEREAS**, the City received three (3) timely responses to the RFQ which were subsequently reviewed and evaluated by the City's Evaluation Team; and

**WHEREAS**, the City evaluation team recommends that the Council authorize the City Manager to enter into a contract with the highest rated firm of Legacy Construction Services Group Inc.

**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 accepts the City's Evaluation Team ranking and authorizes the City Manager and City Attorney to enter into a contract with the top ranked submittal from Legacy Construction Services Group Inc. in the amount of \$133,000.

**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 8<sup>TH</sup> DAY OF JANUARY, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

---

Diane Clavier, City Clerk  
(City Seal)

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

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David Migut, City Attorney

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-08**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
MARATHON, FLORIDA PROVIDING FOR THE CITY OF MARATHON  
TO BECOME A MEMBER OF THE AMERICAN FLOOD COALITION;  
AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, flooding during king tides is already a costly nuisance and a problem that if unaddressed will grow worse as sea levels continue to rise; and

**WHEREAS**, sea level rise has risen 8 inches since 1950 and its speed has increased threefold in recent years, with scientific projections forecasting another 8 inches of sea level rise in the next 20 years; and

**WHEREAS**, sea level rise of just 4 inches in the last 10 years has increased flooding state-wide by 400%; and

**WHEREAS**, sea level rise poses a unique threat to all Florida given the limestone bedrock beneath much of the state which allows rising sea water to infiltrate sewage systems and threaten groundwater supplies via salt water intrusion; and

**WHEREAS**, proactively investing to prevent flooding is a wiser use of resources than spending on flooding recovery, as exemplified by FEMA research showing that \$1 of spent on disaster prevention saves \$4 in recovery costs; and

**WHEREAS**, national coordination and support are necessary for coastal towns to fully address the challenge of sea level rise and flooding, and the American Flood Coalition provides a platform advocating for national solutions to sea level rise and flooding that invest in and protect our coastal communities; and

**WHEREAS**, the American Flood Coalition is a forum for best practices and support in developing local and state-level responses to sea level rise and flooding that will enhance the City's sea level rise effort; and

**WHEREAS**, sea level rise and flooding are important issues that our residents deserve to understand and the American Flood Coalition provides opportunities and tools to communicate with residents on sea level rise challenges and solutions; and

**WHEREAS**, joining the American Flood Coalition will aid the City's efforts to protect against flooding without requiring any financial support or dues from the City Council; and



**WHEREAS**, the City Council finds that joining the American Flood Coalition will promote the welfare of City residents and ensure the prosperity of the City economy by accelerating solutions to sea level rise and flooding.

**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 recognizes the need to advance national solutions to sea level rise and flooding and will work as a member of the American Flood Coalition to safeguard the welfare of the City's residents.

**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 \_\_ DAY OF \_\_\_\_\_ 2019.**

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, 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:**

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David Migut, City Attorney

CITY COUNCIL AGENDA STATEMENT

**Meeting Date:** January 8, 2018  
**To:** Honorable Mayor and Council Members  
**From:** George Garrett, Planning Director  
**Through:** Chuck Lindsey, City Manager

Agenda Item: Resolution 2019-09, Of The City Council Of The City Of Marathon, Florida, Approving An Assignment Of Development Agreement Pursuant To Section IV, W. Of The Development Agreement Between The City Of Marathon And Seaward Properties LLC.; Said Assignment Being Made To Seaward Landings, LLC (RE No 00101050-000000) And Seaward Pointe, LLC (RE NO 00101050-000100); For Properties Located At 8700 Overseas Highway, Nearest Mile Marker 52, Which Is Legally Described As Part Of Govt. Lot 4, Key Vaca, Monroe County, Florida, Having Real Estate Numbers 00101050-000000, 00101050-000100.

BACKGROUND & JUSTIFICATION:

Seaward Properties LLC. Was approved for a Conditional Use Permit entered into a Development Agreement with the City of Marathon, Florida, a Florida municipal corporation pursuant to Resolution 2016-123 and 2017-001. The Development Agreement is recorded in Official Records Book 2850, page 1968, of the Public Records of Monroe County, Florida. Section IV, Sub-section W. of the Development Agreement requires written consent of the City of Marathon for an assignment which will not be unreasonably withheld. Seaward Properties LLC has sold a portion of the property subject to the Development Agreement and assigns its rights, duties, and obligations under the Development Agreement by execution of this instrument to the two new owners in name, Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC, both Florida limited liability companies.

Seaward Properties LLC assigns all its rights and obligations under the aforesaid Development Agreement to Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC (RE No 00101050-000000). Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC accept the assignment and agree to perform all rights, duties, and obligations of the Development Agreement. The City of Marathon consents to this assignment and approves signature of the document attached as "Exhibit A," "Assignment of Development Agreement."

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	<u>X</u>	___
2. Other –Sewer Mandate	<u>X</u>	___

FISCAL NOTE:

APPROVED BY FINANCE DIRECTOR:

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2019-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN ASSIGNMENT OF DEVELOPMENT AGREEMENT PURSUANT TO SECTION IV, W. OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MARATHON AND SEAWARD PROPERTIES LLC.; SAID ASSIGNMENT BEING MADE TO SEAWARD LANDINGS, LLC (RE NO 00101050-000000) AND SEAWARD POINTE, LLC (RE NO 00101050-000100); FOR PROPERTIES LOCATED AT 8700 OVERSEAS HIGHWAY, NEAREST MILE MARKER 52, WHICH IS LEGALLY DESCRIBED AS PART OF GOVT. LOT 4, KEY VACA, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00101050-000000, 00101050-000100.**

**WHEREAS**, Seaward Properties, LLC. Was approved for a Conditional Use Permit and entered into a Development Agreement with the City of Marathon, Florida, a Florida municipal corporation pursuant to Resolutions 2016-123 and 2017-001; and

**WHEREAS**, the Development Agreement is recorded in Official Records Book 2850, page 1968, of the Public Records of Monroe County, Florida; and

**WHEREAS**, Section IV. Sub-section W. of the Development Agreement requires written consent of the City of Marathon for an assignment which will not be unreasonably withheld; and

**WHEREAS**, Seaward Properties LLC. has transferred ownership of the properties subject to the Development Agreement and assigns its rights, duties, and obligations under the Development Agreement by execution of this instrument to the current owners Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC, both Florida limited liability companies,

**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.** Seaward Properties LLC. assigns all its rights and obligations under the aforesaid Development Agreement to Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC, both Florida limited liability companies

**Section 3.** Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC, both Florida limited liability companies accept the assignment and agree to perform all rights, duties, and obligations of the Development Agreement.

**Section 4.** The City of Marathon consents to this assignment and approves signature of the document attached as “Exhibit A,” “Assignment of Development Agreement.”

**Section 5.** This Resolution shall take effect upon approval by the State Department of Economic Opportunity.

**PASSED AND APPROVED** by the City Council of the city of Marathon, Florida, this 8<sup>th</sup> day of January, 2019.

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, 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:**

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David Migut, City Attorney

**EXHIBIT A**

Parcel I.D. Nos.  
RE No. 00101050-000000  
RE No. 00101050-000100  
(Space Reserved for Recording)

### **ASSIGNMENT OF DEVELOPMENT AGREEMENT**

**THIS AGREEEMNT** entered in this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between **SEAWARD PROPERTIES LLC**, A Florida limited liability company, (hereafter, “**ASSIGNOR**”) and Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC (RE No. 00101050-000100), both Florida limited liability companies, “**ASSIGNEES**”); with consent of the **CITY OF MARATHON**, a Florida municipal corporation.

**WHEREAS, ASSIGNOR** entered into a Development Agreement with the City of Marathon, Florida, a Florida municipal corporation; and

**WHEREAS**, the Development agreement was approved pursuant to Resolution 2017-001 and is recorded in Official Records Book 2850, Page 1968, of the Public Records of Monroe County, Florida; and

**WHEREAS**, Section IV., Sub-section W. of the Development Agreement requires written consent of the City of Marathon for an assignment which will not be unreasonably withheld; and

**WHEREAS, ASSIGNOR** has transferred title for properties identified by RE No. 00101050-000000 and 00101050-000100 which are subject to the Development Agreement and assigns its rights, duties, and obligations under the Development Agreement by execution of this instrument to the new owners Seward Landings, LLC (RE No 00101050-000000) and Seaward Pointe LLC, both Florida limited liability companies,

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

1. **ASSIGNOR** assigns all its rights and obligations under aforesaid Development Agreement to **ASSIGNEES**.
2. **ASSIGNEES** accept the assignment and agree to perform all rights, duties, and obligations of the Development Agreement.
3. City of Marathon consents to this assignment.

EXECUTED the date and year below written.

WITNESSES:

ASSIGNOR  
Seaward Properties, LLC

\_\_\_\_\_  
Witness No. 1 – Signature

\_\_\_\_\_  
By: Peter Rosasco, President

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Witness No. 2 - Signature

Printed Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Peter Rosasco, as President, for Seaward Properties, LLC, a Florida limited liability company, who is personally know to me or who produced \_\_\_\_\_ as identification, and who did/did not take and oath.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires:

WITNESSES:

ASSIGNEE  
Seward Landings, LLC

\_\_\_\_\_  
Witness No. 1 – Signature

\_\_\_\_\_  
By: Peter Rosasco, President

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Witness No. 2 - Signature

Printed Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Peter Rosasco, as President for Seaward Landings, LLC, a Florida limited liability company, who is personally know to me or who produced \_\_\_\_\_ as identification, and who did/did not take and oath.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires:



WITNESSES:

ASSIGNEE  
Seward Pointe, LLC

\_\_\_\_\_  
Witness No. 1 – Signature

\_\_\_\_\_  
By:

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Witness No. 2 - Signature

Printed Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MONROE

The following instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Peter Rosasco, as President, for Seaward Pointe, LLC, a Florida limited liability company, who is personally know to me or who produced \_\_\_\_\_ as identification, and who did/did not take and oath.

\_\_\_\_\_  
Notary Public, State of Florida  
My commission expires:

**THE CITY OF MARATHON, FLORIDA**

---

**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier  
City Clerk

(City Seal)

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

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David Migut, City Attorney

# January 2019

January 2019						
Mo	Tu	We	Th	Fr	Sa	Su
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2019						
Mo	Tu	We	Th	Fr	Sa	Su
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Dec 31	Jan 1, 19 New Year's Day City Hall Closed	2	3	4	5	6
7	8 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	9	10	11	12	13
14	15	16 2:00pm Code Hearing (Council Chambers)	17	18	19	20
21 MLK, Jr. Day City Hall Closed	22 5:30pm City Council Meeting (City Hall Council Chambers, 9805 Overseas Hwy.)	23	24	25	26 11:00am Family Fun Fest (Marathon Community Park)	27
28 5:30pm Planning Commission Meeting (City Hall Council Chambers, 9805 Overseas Hwy.) -	29	30	31	Feb 1	2	3