

**Sponsored by:** Puto  
**Planning Commission Public Hearing Date:** June 20, 2005  
**City Council Public Hearing Date:** June 28, 2005  
July 12, 2005  
**Enactment Date:** July 12, 2005

**ORDINANCE 2005-14**

**AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA EXTENDING A MORATORIUM ON THE ACCEPTANCE OF RESIDENTIAL RATE OF GROWTH APPLICATIONS THAT SEEK DEVELOPMENT PERMITS TO DEVELOP PROPERTIES CONTAINING HIGH QUALITY NATURAL AREAS AND ADOPTING INTERIM DEVELOPMENT REGULATIONS DEFERRING ROGO ALLOCATIONS IN HIGH QUALITY NATURAL AREAS UNTIL LDR AND COMPREHENSIVE PLAN AMENDMENTS ARE DRAFTED AND ADOPTED BY THE CITY COUNCIL OR ONE YEAR, WHICHEVER COMES FIRST.**

**WHEREAS**, the GOAL 102 of the City of Marathon Transitional Comprehensive Plan (Transitional Plan) requires the City of Marathon to direct future growth to lands most suitable for development and to conserve and protect environmentally sensitive lands; and

**WHEREAS**, Objective 102.3 requires that new development occur where site disturbances and man's activities have fewer adverse effects on natural vegetation; and

**WHEREAS**, the Florida Administrative Commission in 1996 enacted Rule 28-20.200 which created the "Work Program" in the Transitional Comprehensive Plan. The Work Program required, among other things, the preparation of a Carrying Capacity Study for the Florida Keys; and

**WHEREAS**, the "Work Program", Section B, requires the City to implement the Carrying Capacity Study by the adoption of all necessary plan amendments to establish development standards to ensure that new development does not exceed the carrying capacity of the city's environment; and

**WHEREAS**, the "Work Program" directs the City to initiate and complete a collaborative process for the adoption of Land Development Regulations (LDRs) and Plan amendments to strengthen the protection of terrestrial habitat; and

**WHEREAS**, the Carrying Capacity Study, completed in September 2002, concluded "that land development in the Florida Keys has surpassed the capacity of upland habitats to withstand further development"; and

**WHEREAS**, the LDR and Comprehensive Plan amendments to implement the protection of the terrestrial ecosystem requirements in Rule 28-18.200 are incomplete and will not be

reviewed and adopted by July 13, 2005, deadline and the loss of valuable native habitat is continuing as development in these areas continue; and

**WHEREAS**, this deferment will protect the natural environment while providing additional time to incorporate a comprehensive legal and financial review of the proposed amendments and to identify dedicated funding sources for land acquisition; and

**WHEREAS**, this deferment will be a demonstration of good faith to the Governor and Cabinet that the County is seriously working towards implementing the Carrying Capacity Study and Rule 28-18.200 and should be considered in substantial compliance in meeting the Work Program goals; 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.** No ROGO allocation awards shall be made on any applications within areas, which are classified as high quality hammocks, or areas with known threatened or endangered species with a ROGO entry date of July 13, 2003, or later.

**Section 3.** No further ROGO applications within areas, which are classified as high quality hammocks, or areas with known threatened or endangered species shall be accepted or processed by the Planning Department effective July 13, 2003.

**Section 4.** All vacant lands within areas, which are classified as high quality hammocks, or areas with know threatened or endangered species areas shall be eligible for a ROGO land dedication under Policy 101.5.4(5) and 101.5.5(4) effective the date of this ordinance.

**Section 5.** The moratorium established by this ordinance is temporary and shall automatically dissolve upon the adoption of new Land Development Regulations (LDRs) if the new LDRs strengthening the protection of the terrestrial habitat, the formulations of which shall be expeditiously pursued. Section 3, 4, 5, and 6 of this Ordinance shall remain in full force and effect until either amendments to the Transitional Comprehensive Plan and Land Development Regulations are drafted and adopted by the City Council to implement the City of Marathon Comprehensive Plan, whichever comes first.

**Section 6.** The City Manager is directed to have the Planning Department immediately begin working to prepare the draft text and map amendments and other supporting studies in cooperation with the Planning Commission.

**Section 7.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of 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 sections, sentences,

clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 8.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

**Section 9.** 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 Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 10.** This Ordinance shall be effective upon approval by the State Department of Community Affairs, pursuant to Chapter 380, *Florida Statutes*.


**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, this 12th day of July, 2005.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**John Bartus, Mayor**

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

**ATTEST:**

  
\_\_\_\_\_  
Cindy L. Ecklund  
City Clerk

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

  
\_\_\_\_\_  
City Attorney

AUG 10 2005

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND DEVELOPMENT  
REGULATIONS ADOPTED BY  
CITY OF MARATHON ORDINANCE NO. 2005-14

DR  
cc - COWLEY  
cc - MIKE  
cc - CLARK  
cc - GALL K

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2004), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Marathon is a local government within the Florida Keys Area.

2. On July 18, 2005, the Department received for review City of Marathon Ordinance No. 2005-14 which was adopted by the City Council of the City of Marathon on July 12, 2005 ("Ord. 2005-14").

3. The purpose of Ord. 2005-14 is to extend a moratorium on the acceptance of residential rate of growth applications. Specifically, this is a moratorium on residential rate of growth applications seeking development permits to develop properties containing high quality natural areas and adopting interim development regulations deferring ROGO allocations in high quality natural areas until Land Development Regulations and comprehensive plan amendments are drafted and adopted. This is in accordance with the City of Marathon Transitional Comprehensive Plan which requires the City to direct future growth to lands most suitable for development and to conserve and protect environmentally sensitive lands.

4. Ord. 2005-14 is consistent with the City of Marathon Transitional Comprehensive Plan.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2004).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2004) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

7. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2004). The regulations adopted by Ord. 2005-14 are land development regulations.

8. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the "Principles") as set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 2005-14 promotes and furthers the following Principles:

- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (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, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.


10. Ord. 2005-14 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2005-14 is found to be consistent with the

Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.

  
\_\_\_\_\_  
JAMES L. QUINN  
State Planning Administrator  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**NOTICE OF ADMINISTRATIVE RIGHTS**

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY

ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

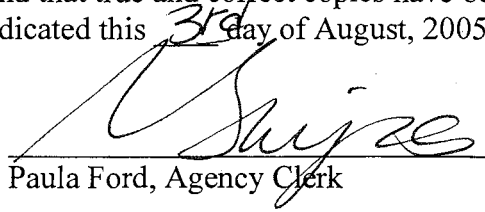
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

**YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.**

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 3rd day of August, 2005.

  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, Mayor  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Katherine V. Selchan, City Clerk  
City of Marathon  
210 University Drive  
Coral Springs, Florida 33071

Scott Janke  
City Manager  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

John R. Herin, Jr.  
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.  
City Attorney  
City of Marathon  
2665 South Bayshore Drive, Suite 420  
Miami, Florida 33133

By Hand Delivery or Interagency Mail:

Jim Quinn, Bureau of State Planning, DCA Tallahassee  
Rebecca Jetton, ACSC Administrator, DCA Tallahassee  
Richard E. Shine, Assistant General Counsel, DCA Tallahassee