

**Sponsored By:** Burnett  
**Planning Commission Public Hearing Date:** February 17, 2009  
**City Council Public Hearing Date:** March 10, 2009 and March 31, 2009  
**Enactment Date:** March 31, 2009

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2009-11**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 103.12 A., RESIDENTIAL-MOBILE HOME AND TABLE 103.15.1 OF THE LAND DEVELOPMENT REGULATIONS; TO RE-ESTABLISH RECREATIONAL VEHICLE PARK AS AN ALLOWED USE IN THE RESIDENTIAL-MOBILE HOME ZONING DISTRICT; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (the "DEPARTMENT"); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW.**

**WHEREAS**, the Charter creating the City of Marathon (the "City") adopted the Monroe County Comprehensive Plan and Land Development Regulations until such a time as the City could adopt its own; and

**WHEREAS**, the City adopted a new Comprehensive Plan on March 8, 2005 which became effective on July 7, 2005; and

**WHEREAS**, the City further, adopted Land Development Regulations ("LDRs") which became effective on November 7, 2007 and as adopted are intended to reflect the Goals, Objectives, and Policies adopted in the City's Comprehensive Plan; and

**WHEREAS**, Objective 1-3.4 of the City of Marathon Comprehensive Plan serves to protect established uses, densities, and intensities:

*"The City shall recognize and protect lawfully established uses, lawfully established transient, non-transient, and permanent RV residential densities and intensities within the City and shall encourage the rehabilitation and maintenance of all residential and non-residential structures within the community. 9J-5.006(3)(b)3" and*

**WHEREAS**, it was the intent of the City to reflect this policy in the creation of new Future Land Use Map (FLUM) and Zoning categories, establishing similar "allowed uses" thereby minimizing the creation of non-conforming uses and structures; and

**WHEREAS**, the Residential High FLUM category as recited below:

*Residential High*

The principal purpose of the Residential High land use category is to provide for high-density single-family, multi-family, and institutional residential development. The Residential High land Use category is characterized by high density compact development on lots with disturbed or scarified vegetation and areas that are appropriate for infill development and that are served by existing infrastructure. Lawfully established RV parks where a majority of the recreational vehicles have been converted into permanent structures are also allowed within the residential high land use category (See Objective 1-3.3 and 1-3.4 and the Policies therein.) The minimum lot size/density/intensity identified in Table I-1 shall not preclude the continued use or redevelopment of existing commercial, if applicable, or residential uses on a smaller lot where such lot or parcel was platted or otherwise of record prior to the adoption of this Plan. Additionally, the application of the height and lot coverage limitations contained in the Plan and the Land Development Regulations shall not preclude the repair or reconstruction of any structure or portion thereof which is damaged by any natural disaster or other casualty as provided for in Objective 1-3.4 and Policies therein. 9J-5.006(3)(c)1 and 7

recognizes the existence of RV Parks in the Residential High FLUM category; and

**WHEREAS;** the Mobile Home Park Zoning District in the County’s LDRs and in the current City LDRs is seen as a subset of the Residential High FLUM category; and

**WHEREAS;** the Mobile Home Park District , established in the Monroe County LDRs, as adopted originally by the City, establishes RV Parks as an allowed use; and

**WHEREAS,** the City Council believes that it was an oversight that RV Parks are not currently an allowed use in the Mobile Home Park Zoning District; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

~~Strikethrough~~ = deletion      **bold underline** = addition

**Section 1.**      The above recitals are hereby confirmed and adopted.

**Section 2.**      Section 103.12 is hereby amended to read as follows:

Section 103.12. Residential Zoning Districts.  
The purpose for the residential districts is to provide for a variety of residential densities while protecting environmentally sensitive areas. The districts will also provide areas for higher densities and more affordable housing opportunities.

A. *Residential-Mobile Home (R-MH) District:* The R-MH District is intended to establish areas of high-density residential uses characterized by mobile homes in mobile home parks and, permanent RVs, and transient RVs where they have previously existed in the District, designated within the Residential High (RH) future land use category on the Future Land Use Map (FLUM).

B. *Residential High (RH) District:* The RH District is intended to establish areas of high-density residential uses characterized by multi-family dwellings and mobile homes designated within the Residential High (RH) future land use category on the Future Land Use Map (FLUM).

C. *Residential Medium (RM) District:* The RM District is intended 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).

D. *Residential Medium-1 (RM-1) District:* The RM-1 District is intended to establish an area in the Coco Plum subdivision to ensure that the traditional lot sizes are maintained for single-family detached dwellings, through additional limitations as noted within this subsection, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM).

E. *Residential Medium-2 (RM-2) District:* The RM-2 District is intended to establish areas in the Coco Plum subdivision 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).

F. *Residential Low (RL) District:* The RL District is intended to establish areas of low-density residential uses characterized by single-family detached dwellings, designated within the Residential Low (RL) future land use category on the Future Land Use Map (FLUM).

**Section 3.** Section 103.15, Table 103.15.1 of the Land Development Regulations is hereby amended to include R:

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Section 103.15. Standards.

A. *Uses*: Certain uses, whether permitted as of right, limited, accessory or conditional uses may affect adjacent properties, the neighborhood, or community, even if the site planning and development standards of the applicable zoning district are satisfied. Uses in bold on Table 103.15.1 have special criteria contained in Article 1 of Chapter 104 "Specific Use Regulations", which are intended to mitigate potential problems and hazards, and to ensure consistency with the Plan.

B. *Zoning Districts*: The density, intensity, setbacks, and dimensional standards relative to each parcel are subject to the limitations of the zoning district as reflected in Tables 103.15.1 and 103.15.2.

Table 103.15.1

Uses by Zoning District  
TABLE INSET:

Uses in bold have specific conditions listed in Chapter 104																
ZONING DISTRICT	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
Accessory buildings and accessory uses			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory Business /Professional Office											A	A	A			
Adult day care			C	C	C	C	C	C	C	C						
Adult uses including product sales and entertainment												C				
Affordable Housing Unit				P	P	P	P	P	P	P	P	P	P		P	P
Airport public uses < 5,000 square feet														P		

Airport public uses > 5,000 square feet														C		
Alcohol Beverage										L	L	L	L			
Amusement or Sea life parks										C	C		C		C	
Artisan and photography studios and galleries										P	P					
Auto, RV, and truck storage										C		C				
Bars and taverns										C	C					
Beekeeping	P	P	P	P												
Boardwalk/Observation Platform	A	A	A	A	A	A	A	A	A	A	A		A		P	P
Boat Ramp					C			C		C	C	C	C		C	C
Boat storage + 10 units, Dry											C	P	P		P	
Boat storage + 10 units, wet											C	P	P		P	
Boat storage < 10 units, dry										C	P	P	P		P	
Boat storage < 10 units, wet										C	P	P	P			

Boat Yard											C		P			
Boat/ship dockage (noncommercial) 10+ slips								A	A							
Boat/ship (commercial) dockage or charter										A	A	A	A		C	C
Boat/ship dockage (noncommercial) + 100' in length: 1-9 slips	L	L	L	L	L	L	L	L	L							
Boat/ship dockage (noncommercial) up to 100' in length: 1-9 slips	A	A	A	A	A	A	A	A	A							
Bowling alley										C						
Broadcasting or Communications Tower	C	C								C	C	C	C	C	P	
Campground										C					C	C
Car wash										C						
Cemeteries										C						
Child care center									C	C						
Child care homes (up to 10 car trips per day)				C	C	C	C	C	C	C						

Clubs: Social, fraternal and lodges										P	P					
Community Workforce Housing Unit								A	A	A	A	A	A		A	A
Convenience store										P	C	C	C			
Dormitory										A						
Dry cleaning										P						
Duplex dwellings					C		C	P	P	C						
Equipment, rental establishments with outdoor storage										C	C	C	C			
Equipment, rental establishments without outdoor storage										P	P	P	P			
Financial services (without drive through)										P		C			P	
Financial services (w/drive through)										C						
Food catering										P	P					
Fuel Sales										C	C		C			
Funeral homes (no crematory)										C						
Golf courses										C						C

Group Homes (<7 residents)			P	P	P	P	P	P	P	C						
Group Homes (7-14 residents)			C	C	C	C	C	C	C	C						
Hazardous Waste Small Generator										C		C	C		C	
Health and membership clubs										P						
Heavy equipment sales										C		P				
Heavy equipment Sales, Marine										C	P	P	P			
Helicopter Landing Pad										C				P	P	
Home occupations	L	L	L	L	L	L	L	L	L	L	L					
Hospitals										P						
Hotel/Motel/Resort lodging										C						C
Incidental Food Sales												A	A			
Laundromats										P	C					
Live-aboard Vessels										C	C		C			
Manufacturing, assembly, storage,										C	C	P	P			



fabrication or distributions of goods and materials																
Manufacturing, Heavy												C				
Marina										C	P		P		P	C
Massage Therapist										L						
Media Sales and Rental										P						
Medical and dental offices and clinics										C					C	C
Mineral resource processes and sales establishment												P				
Mobile Home Park								P	C	C						
Mobile Home: New Placement								P		C						
Mobile Home: Replacement					P	P	P	P	P	P	P	P				
Model Home								A	A	A						
Multi-family (<5) dwellings								P	P	C	P					C
Multi-family (5+) dwellings								C	C	C	C					C

Multi-tenant retail < 10,000 sf FA										P	P					
Multi-tenant retail > 10,000 sf FA										C						
Museum										P	P			P	P	P
Night clubs										C	A					
Nursing Home									C	C						
Open-air markets										C	C			C		
<b>Outdoor display</b>										A	A		A			
<b>Outdoor Storage</b>										C	C	C	C			
<b>Paint and body shop</b>										C		C	C			
<b>Parking lots and parking garages (as a principle use)</b>										P		C			P	
<b>Parks and recreational open space</b>	C		C	C	C	C	C	C	C	P					P	P
<b>Personal and service business shops</b>										P	C					
<b>Pharmacy</b>										C	C					
<b>Place of worship or</b>					C	C	C	C	C	P						



without repair and storage																
Recreational Vehicle (RV) Park								<u>C</u>		C						C
Recycling facilities												P				
Research/Lab										C	C	C	C			C
Restaurants with drive-throughs										P	C					
Restaurants/stand and fast food without drive throughs										P	P	P	P	A		
Retail and supply yard establishments with outdoor storage										C	C	P	P			
Retail establishments up to 2,500 square feet FA										P	P					P
Retail establishments 2,500 -10,000 square feet FA										P	P					
Retail Establishment exceeding 10,000 square feet FA										C						
Safe house for									P	P						

battered or abused adults or children of up to eight (8) families																
Sales and leasing of heavy equipment and heavy excavation equipment												P	P			
Sexually Oriented Business												C				
Single-family dwellings	P	P	P	P	P	P	P	P	P	C	C	C	C			A
Small animal shelters/boarding kennels										C	C	C	C		C	
Small Grocery Stores										P						
Storage (Indoor self)										C	C	P				
Storage, Auto, RV, or Boat										C	C	P	P			
Storage (Outdoor)										C	C	C	C			
Temporary Placement				L	L	L	L	L	L	L	L					
Temporary Use										L	L	L	L		L	L



<b>Wireless - New Tower</b>										C	C	C	C	C	C	C
<b>Wireless Tower- Replacement existing</b>	C							P	P	P	P	P	P	P	P	C
<b>Wireless - Satellite Earth Station</b>	C									C	C	P	P			
<b>Wireless Attached facility</b>	C	C	P	P	P	P	P	P	P	P	P	P	P	P	P	P
<b>Wireless - Stealth Facility</b>										C	C	P	P		P	
<b>Zero Lot lines (affordable units)</b>								C	C							

\*Permitted uses are limited to those which are related to the maritime industry

Note: Uses may be subject to additional requirements, see Chapter 104, Specific Use Regulations.

**Section 3.** The Provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

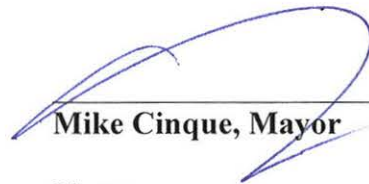
**Section 4.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or 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 5.** 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 6.** This Ordinance shall be effective immediately 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 31<sup>st</sup> day of March, 2009.**

**THE CITY OF MARATHON, FLORIDA**


  
\_\_\_\_\_  
**Mike Cinque, Mayor**

AYES: Snead, Worthington, Vasil, Ramsay, Cinque  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

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

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

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



**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2009-11

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**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.* (2008), 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 ("City") is a local government within the Florida Keys Area.
2. On May 4, 2009, the Department received for review City of Marathon Ordinance No. 2009-11 that was adopted by the City of Marathon Board of City Commissioners on March 31, 2009 ("Ord. 2009-11"). The purpose of Ord. 2009-11 is to amend Section 103.12 A, and Section 103.15.1 of the Land Development Regulations to re-establish Recreational Vehicle Park as an allowed use in the Residential-Mobile Home Zoning District.
3. Ord. 2009-11 is consistent with the City's 2010 Comprehensive Plan: Policy 1-3.2.6 Restrict Development of New Transient Units; Policy 1-3.1.4 Future Land Use Categories; Objective 1-3.4 Protect Established Uses, Densities, and Intensities; and Policy 1-3.4.1 Protect Established Residential Densities.

**CONCLUSIONS OF LAW**

4. 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.* (2008).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2008) and Rule 31-31.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

6. “Land development regulations” include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2008). The regulations adopted by Ord. 2009-11 are land development regulations.

7. 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.

8. Ord. 2009-11 is consistent with the following Principle:

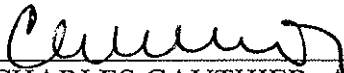
- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development

9. Ord. 2009-11 is neutral with respect to the remaining Principles. Ord. 2009-11 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2009-11 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.

  
\_\_\_\_\_  
CHARLES GAUTHIER, AICP  
Director, Division of Community Planning  
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.

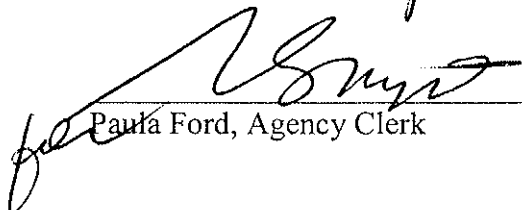
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 31-106.201(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 15<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Mike Cinque, Mayor  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Diane Clavier, City Clerk  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

Mike Puto  
City Manager  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Jimmy Morales, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
Suite 2200 Museum Tower  
150 West Flagler Street  
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator  
Richard E. Shine, Assistant General Counsel