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**CITY OF MARATHON, FLORIDA  
ORDINANCE 2012-02**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA; REPEALING THE EXISTING CONTENT OF THE LAND DEVELOPMENT REGULATIONS CHAPTER 107, ARTICLE 12, "100-YEAR FLOODPLAIN;" ESTABLISHING REPLACEMENT LAND DEVELOPMENT REGULATIONS ARTICLE 12. FLOODPLAIN MANAGEMENT; INCLUDING A HABITAT CONSERVATION PLAN AND ENDANGERED SPECIES ASSESSMENT TO GUIDE FUTURE DEVELOPMENT; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE ; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT OF ECONOMIC OPPORTUNITY IN ACCORDANCE WITH STATE LAW.**

**WHEREAS**, (this is where background and justification is stated with as many "Whereas" clauses as deemed necessary); and

**WHEREAS**, The Legislature of the State of Florida has authorized and delegated in Chapter 166, Florida Statutes, the responsibility of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the City of Marathon( the "City") enacted the City of Marathon Land Development Regulations which became effective on November 7, 2007 in Compliance with its approved Comprehensive Plan; and.

**WHEREAS**, this Ordinance revises the City of Marathon Land Development Regulations to comply with the regulations set forth by the State of Florida, The Department of Fish And Wildlife, and The Federal Emergency Management Agency;

**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**Section 2** The contents of Chapter 107, Article 12 are hereby repealed.

**Section 3** The following language shall be inserted to replace the contents of Chapter 107, Article 12, Floodplain Management:

## **ARTICLE 12. - FLOODPLAIN MANAGEMENT**

### **Section 107.98 Statutory Authorization**

The Legislature of the State of Florida has authorized and delegated in Chapter 166, Florida Statutes, the responsibility of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

### **Section 107.99 Findings Of Fact**

- A. The flood hazard areas of the City of Marathon are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, economy, and general welfare.
- B. These flood losses are increased by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

### **Section 107.100 Statement Of Purpose**

It is the purpose of this ordinance to save lives, promote the public health, safety and general welfare, and minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Restrict or prohibit uses which are dangerous to life, health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;
- B. Require that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

### **Section 107.101 Objectives**

The objectives of this ordinance are to:

- A. Protect human life, health and to eliminate or minimize property damage;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;
- F. Ensure that potential homebuyers are notified that property is in a flood hazard area.

#### **Section 107.102 Definitions**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application. Any definitions that conflict with definitions elsewhere in the Land Development Regulations shall apply solely to this article.

*Accessory structure (Appurtenant structure)* means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

*Applicability* means that this Article shall apply to all areas within the boundaries of the City of Marathon which are designated as a special flood hazard.

*Appeal* means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

*Area of special flood hazard* is the land in the floodplain within a community subject to a one- percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this ordinance.

*Base Flood Elevation* means the water-surface elevation associated with the base flood.

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

**Building** – see Structure.

**Coastal high hazard area** means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone VI – V30, VE, or V.

**Datum** means a reference surface used to ensure that all elevation records are properly related. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

**Development** means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of materials or equipment.

**Elevated building** means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing Construction** or structures means any structure for which the “start of construction” occurred before October 16, 2000.

**Flood or flooding means:**

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - 1. The overflow of inland or tidal waters.
  - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
  - 3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
  
- B. The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high

water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

**Flood Boundary and Floodway Map (FBFM)** means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

**Flood Hazard Boundary Map (FHBM)** means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

**Flood Insurance Rate Map (FIRM)** means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** means the official hydrology and hydraulics report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

**Floodplain** means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

**Floodplain Administrator** is the individual appointed to administer and enforce the floodplain management regulations of the City of Marathon, Florida.

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Free of Obstruction** means any type of lower area enclosure or other construction element will not obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event. This requirement applies to the structures in velocity zones (V-Zones).

**Functionally dependent use** means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water.

**Hardship as related to variances from this ordinance** means the exceptional difficulty associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

**Historic Structure** means any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By the approved Florida program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior.

**Lowest adjacent grade** means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

**Lowest floor** means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design standards of this article.

**Mangrove Stand** means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

**Market value** means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

**Mean Sea Level** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

**National Geodetic Vertical Datum (NGVD) of 1929** means a vertical control used as a reference for establishing varying elevations within the floodplain.

**New Construction** means, for floodplain management purposes, any structure for which the "start of construction" commenced on or after October 16, 2000. The term also includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD) of 1988** means a vertical control used as a reference for establishing varying elevations within the floodplain.

**Public safety and nuisance** means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable canal or basin.

**Reasonably safe from flooding** means base floodwaters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**Remedy a deficiency or violation** means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal, or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement

provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

***Repetitive loss*** means flood related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

***Special flood hazard area*** – see area of special flood hazard.

***Start of construction*** means, for other than new construction and substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

***Structure*** means, for floodplain management purposes, a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

***Substantial damage*** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

***Substantial improvement*** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which, over a 3-year period, equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the initial improvement. This term includes structures that have incurred “substantial damage” regardless of the actual repair work performed. This term does not, however, include: (1) any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions.

***Variance*** is a grant of relief from the requirements of this ordinance.



Violation means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **Section 107.103      General Provisions**

#### **A.      LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all jurisdictional areas of the City of Marathon, Florida.

#### **B.      BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The entire city is an area of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for the City of Marathon, dated February 18, 2005, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and Flood Insurance Rate Map are on file at city hall.

#### **C.      DESIGNATION OF FLOODPLAIN ADMINISTRATOR**

The City Manager or his/her designee shall administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

#### **D.      ESTABLISHMENT OF DEVELOPMENT PERMIT**

A development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

#### **E.      COMPLIANCE**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

#### **F.      ABROGATION AND GREATER RESTRICTIONS**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **G. INTERPRETATION**

In the interpretation and application of this ordinance all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State of Florida statutes.

#### **H. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of City Council of the City of Marathon, Florida or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

#### **I. PENALTIES FOR VIOLATION**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a non-criminal violation. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as are necessary to prevent or remedy any violation.

### **Section 107.104. ADMINISTRATION**

#### **A. PERMIT PROCEDURES**

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing and proposed structures, flood zone delineations,

earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Application Stage:

- (a) Elevation in relation to mean sea level of the proposed lowest floor of all buildings using the current version of the FEMA Elevation Certificate (A registered land surveyor's certified topographic survey showing the proposed lowest floor elevation may be submitted in lieu of the Elevation Certificate);
- (b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
- (c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Section 107.104 A. 2. and Section 107.105 B. 2. using the current version of the FEMA Floodproofing Certificate;
- (d) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and/or reviewed the structural designs, specifications and plans of the construction and certified that are in accordance with accepted standards of practice in Coastal High Hazard Areas using the current version of the City of Marathon's V-Zone Certification form.

2. Under Construction Stage:

Upon placement of the lowest floor, flood-proofing by whatever construction means, or when in VE-zone the bottom of the lowest horizontal structural member of the lowest floor, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation, or bottom of the lowest horizontal structural member of the lowest floor, as built, in relation to mean sea level.

- (a) Said lowest floor elevation certification shall be prepared by or under the direct supervision of a Florida registered land surveyor and certified by the same.
- (b) When flood proofing is utilized for a nonresidential building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same.
- (c) Any work undertaken prior to submission of the certification shall be at the permit holder's risk.

- (d) The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted.
- (e) The permit holder shall correct violations detected by such review within 30 days and prior to further progressive work being permitted to proceed.
- (f) Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the development.

3. Finished Construction Stage:

- (a) Finished construction Elevation Certificate, approved by the Floodplain Administrator, is required prior to the issuance of a Certificate of Occupancy.
- (b) Final elevation certification shall only be certified after all machinery and/or equipment such as furnaces, hot water heaters, heat pumps, air conditioners, and elevators along with their associated equipment have been installed and the grading around the building completed.

**B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR**

Duties of the Administrator shall include, but are not be limited to, the following:

1. Review permits to assure sites are reasonably safe from flooding;
2. Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
3. Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334 including those required from the U.S. Fish and Wildlife Service (herein after referred to as the Service);
4. Require copies of additional Federal, State of Florida, The South Florida Water Management District, and local permits, especially as they relate to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065; and 553, Part IV, Florida Statutes, be submitted along with the development permit application and maintain such permits on file with the development permit;

5. Notify FEMA within six months when new technical or scientific data becomes available to the community concerning physical changes affecting flooding conditions so that risk premium rates and flood plain management requirements will be based on current data.
6. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new and substantially improved buildings, in accordance with Section 107.105 B. 1. and 2. and 107.105 D. 2, respectively;
7. Verify and record the actual elevation (in relation to mean sea level) to which the new and substantially improved buildings have been flood-proofed, in accordance with Section 107.105 B. 2.;
8. Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification using the FEMA Floodproofing Certificate shall be obtained from a registered engineer or architect certifying that all areas of the building, together with attendant utilities and sanitary facilities, below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Section 107.105 B. 2. of this ordinance. In Coastal High Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to pilings or columns in order to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard Areas, if the area below the lowest horizontal structural member of the lowest floor is enclosed, it may be done so with open wood lattice and insect screening or with non-supporting breakaway walls that meet the standards of Section 107.105 D. 6. of this ordinance;
9. Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Subsection;
10. When base flood elevation data and floodway data have not been provided in accordance with Section 107.103 B., the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of Section 107.105;
11. Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA;

12. Determine whether a permit application needs technical assistance by the Service using the Species Assessment Guide. Provide development permit applications to the U.S. Fish and Wildlife Service (Service) weekly that require the Service's technical assistance.
13. Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Section 107.105 B. 1. and 2., respectively.

## **Section 107.105 PROVISIONS FOR FLOOD HAZARD REDUCTION**

### **A. GENERAL STANDARDS**

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

1. New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
3. New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
4. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
6. Placement of on-site waste disposal systems shall be prohibited except where specifically exempted by the City of Marathon Wastewater Utility;
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
8. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance;

9. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;
10. All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator along with the application for development permit. Copies of such permits shall be maintained on file with the development permit. State of Florida permits may include, but not be limited to, the following:
  - (a) South Florida Water Management District: in accordance with Chapter 373.036 Florida Statutes, Section (2) (a) – Flood Protection and Floodplain Management;
  - (b) Department of Economic Opportunity: in accordance with Chapter 380.05 F.S. Areas of Critical State Concern, and Chapter 553, Part IV F.S., Florida Building Code;
11. When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction.
12. When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.
13. All proposed development shall meet the conditions established on the floodplain development permit based on the Service recommendations to avoid possible impacts on Federally listed threatened and endangered species or their critical habitat.
14. Placement of manufactured homes and recreational vehicles are prohibited.

**B. SPECIFIC STANDARDS.**

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, A (with base flood elevation), as set forth in Section 107.103 B., the following provisions, in addition to those set forth in Section 107.105 A., shall apply:

1. **Residential Structures.** All new construction and substantial improvement of any residential building shall have the lowest floor elevated to no lower than the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure absent backfill, there must be a minimum of two openings on different sides of each enclosed area sufficient to

facilitate automatic equalization of flood hydrostatic forces in accordance with standards of Section 107.105 B. 3..

2. **Non-Residential Structures.** All new construction and substantial improvement of any commercial, industrial, or non-residential building shall have the lowest floor, elevated to no lower than the base flood elevation. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components, together with attendant utilities and sanitary facilities, below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.
  
3. **Enclosures below the Lowest Floor.** New construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
  - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:
    - i. Provide a minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - ii. The bottom of all openings shall be no higher than one foot above adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade); and
    - iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.
  
  - (b) Fully enclosed areas below the lowest floor that are subject to flooding shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the



premises (standard exterior door), or entry to the living area (stairway or elevator);

(c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms; and

(d) Building owner shall complete and file in the Public Records of Monroe County a non-conversion agreement, promising not to improve, finish, or otherwise convert the area below the lowest floor to a nonconforming use other than those stipulated in this ordinance and granting the city the right to inspect the enclosed area at any reasonable time in the future.

4. Adequate drainage paths around structures shall be provided on slopes to guide water away from structures within Zone AH.

**C. SPECIFIC STANDARDS FOR A-ZONES WITHOUT BASE FLOOD ELEVATIONS AND REGULATORY FLOODWAYS.**

Located within the areas of special flood hazard established in Section 105.103 B., where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

1. Require standards of Section 107.105 A..

2. Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data. Standards set forth in Article B, Section B shall apply.

3. Notify, in riverine situations, adjacent communities, the Florida Department of Community Affairs – NFIP Coordinating Office, and the South Florida Water Management District prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

4. Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

5. The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of Section 107.105 B. shall apply. The Floodplain Administrator shall:

- (a) Obtain the elevation (in relation to the mean sea level) of the lowest floor of all new and substantially improved structures,
- (b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section 107.105 B. 2., the elevation in relation to the mean sea level to which the structure has been floodproofed, and
- (c) Maintain a record of all such information.

**D. STANDARDS FOR COASTAL HIGH HAZARD AREAS (V-ZONES)**

Located within areas of special flood hazard established in Section 107.103 B. are Coastal High Hazard Areas, designated as Zones V1–30, VE, or V (with BFE). The following provisions shall apply:

- 1. Meet the standards of Section 107.104 A. and Sections 107.105 A., B., and C.
- 2. All new construction and substantial improvements in Zones V1–V30, VE, and V (with BFE) shall be elevated on pilings or columns so that:
  - (a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to no lower than the base flood elevation whether or not the structure contains a basement; and
  - (b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading will be those values associated with the base flood. Wind loading values will be those required by applicable State of Florida or local, if more stringent than those of the State of Florida, building standards.
- 3. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.
- 4. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures. The Floodplain Administrator shall maintain a record of all such information.
- 5. All new construction and substantial improvements shall be located landward of the reach of mean high tide.

6. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State of Florida or local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
  - (a) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
  - (b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading shall be those values associated with the base flood. The wind loading values shall be those required by applicable Florida or local, if more stringent than those of the State of Florida, building standards.
  - (c) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be finished, partitioned into multiple rooms, or temperature-controlled.
7. Prohibit the use of fill for structural support. No development permit shall be issued for development involving fill in coastal high hazard areas unless it has been demonstrated through appropriate engineering analyses that the subject fill does not cause any adverse impacts to the structure on site or other properties by wave ramping and/or deflection.
8. Prohibit man-made alteration of mangrove stands that would increase potential flood damage.
9. When fill is proposed, in accordance with the permit issued by the Florida Department of Health, in coastal high hazard area, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood nor cause any adverse impacts to the structure on site or other properties by wave ramping and/or deflection.

**A. BASIS FOR ESTABLISHING SPECIES FOCUS AREAS AND REAL ESTATE NUMBERS**

The Species Focus Area Maps (SFAMs) and the real estate numbers of parcels (RE List) that are within the SFAMs identified by the Service in accordance with the Biological Opinion, dated April 30, 2010, as amended, for the City of Marathon, and any subsequent revisions there to, are hereby declared to be a part of this ordinance. The SFAMs and RE list are on file at the city hall.

**B. APPLICATIONS WITH DETERMINATION OF UNSUITABLE HABITAT**

For a floodplain development permit application that is shown on the SFAMs and the RE list as containing unsuitable habitat, the City of Marathon shall place a letter in the floodplain development permit file that indicates:

1. The name of the city official that made the determination;
2. The date of the determination; and
3. The date of the SFAM and RE list used to make the determination.

Once the determination has been made, the City of Marathon may take action on the floodplain development permit application without further concern for Federally threatened and endangered species and their habitat.

**C. SPECIES ASSESSMENT GUIDES AND ACCEPTANCE FORM**

The Species Assessment Guide provided by the Service, dated December 23, 2011 and any subsequent revisions there to, for the City of Marathon, is hereby declared to be a part of this ordinance. The Assessment Guide is on file at the city hall.

1. The City of Marathon shall use the Species Assessment Guide to determine whether a floodplain development permit application needs technical assistance by the Service. For a floodplain development permit applications that requires the Service's technical assistance, the City of Marathon shall provide the applications to the Service for review on a weekly basis.
2. Based on the Service's technical assistance, the City of Marathon shall condition the floodplain development permit to incorporate the Service recommendations to avoid and/or to minimize possible impacts on Federally listed threatened and endangered species and their habitat.
3. The City shall maintain an Acceptance Form of the Service recommendations in the permit file. The Acceptance Form shall be signed by the permit applicant and the building official.

4. The City shall use the Species Assessment Guide for properties within an expired Habitat Conservation Plan within the SAFMs and RE List to determine if the development permit application must be provided to the Service for technical assistance and shall meet the requirements of the applicable sections of this Ordinance.

**D. AVOIDING IMPACTS ON FEDERALLY LISTED SPECIES**

1. All proposed development shall meet the conditions established on the floodplain development permit based on Service recommendations to avoid possible impacts to Federally threatened and endangered species and their habitat.

**Section 107.107 VARIANCE PROCEDURES.**

**A. DESIGNATION OF VARIANCE AND APPEALS BOARD.**

The Planning Commission as established by the City Council of the City of Marathon shall hear and decide appeals and requests for variances from the requirements of this ordinance.

**B. DUTIES OF VARIANCE AND APPEALS BOARD.**

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Management Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the Planning Commission may appeal such decision to the City Council of the City of Marathon.

**C. VARIANCE PROCEDURES.**

In acting upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger of life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;

6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**D. CONDITIONS FOR VARIANCES.**

1. Variences shall only be issued when there is:
  - (a) A showing of good and sufficient cause; and
  - (b) A determination that failure to grant the variance would result in exceptional hardship; and
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; or
  - (d) A Functionally Dependent Use when the requirements of Sections 107.105 D. 1. and (a) through (c) –and all nonelevation design requirements of Sections 107.107 A. through C. are satisfied.
  - (e) Variences may be issued for the repair and rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
2. Variences shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.

3. Variations shall not be granted after-the-fact.
4. The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variations upon request to FEMA and/or the Florida Division of Emergency Management State Floodplain Management Office.

**E. VARIANCE NOTIFICATION.**

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

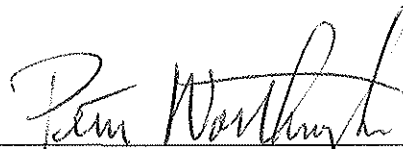
1. The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
2. Such construction below the base flood level increases risks to life and property.
3. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

**Section 4.** 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 5.** This Ordinance shall be effective June of 2012 and 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 24<sup>th</sup> day of January, 2012.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Pete Worthington, Mayor**

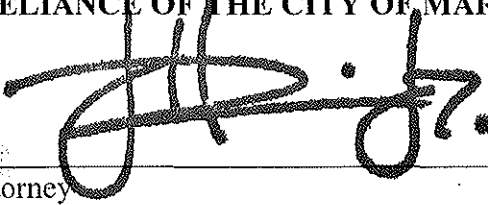
AYES: Cinque, Snead, Ramsay, Keating, Worthington  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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 ECONOMIC OPPORTUNITY**

In re: CITY OF MARATHON LAND DEVELOPMENT  
REGULATIONS ADOPTED BY  
MARATHON ORDINANCE NO. 2012-02

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FINAL ORDER

The Department of Economic Opportunity (the “Department”) hereby issues its Final Order, pursuant to § 380.05(6) and § 380.0552(9), Fla. Stat. (2011), approving land development regulations adopted by City of Marathon Ordinance No. 2012-02 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by § 380.0552, Fla. Stat., as an area of critical state concern. The City of Marathon is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on January 24, 2012. The Department received the Ordinance for review on March 22, 2012.
3. The Ordinance amends Chapter 107, Article 12 of the City’s land development regulations regarding floodplain management to update and ensure consistency with the U.S. Fish and Wildlife Services’ Biological Opinion. The revisions include procedures for coordination with the U.S. Fish and Wildlife Service when development is proposed within habitat shown on the Specific Focus Area Maps.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. § 380.05(6) and (11) and § 380.0552(9), Fla. Stat.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. The regulations adopted by the Ordinance are land development regulations.

6. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the “Principles”). § 380.05(6) and § 380.0552(9), Fla. Stat. The Principles for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Fla. Stat.

7. The Ordinance is consistent with the Principles for Guiding Development as a whole, and with the following Principles:

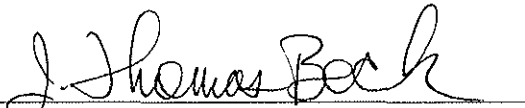
- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

8. The Ordinance is consistent the City of Marathon Comprehensive Plan, and furthers Policies 4-1.2.2 and 4.1.3.3.

WHEREFORE, IT IS ORDERED that City of Marathon Ordinance No. 2012-02 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.

  
\_\_\_\_\_  
J. Thomas Beck, AICP  
Director, Division of Community Planning  
Department of Economic Opportunity

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, 107 EAST MADISON STREET, MSC 110, TALLAHASSEE, FLORIDA 32399-4128.

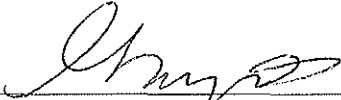
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 11 day of May, 2012.

  
\_\_\_\_\_  
Miriam Snipes, Agency Clerk  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Pete Worthington  
Mayor, City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

Diane Clavier, City Clerk  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett, Director of Planning  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

John Herin, Esq., City Attorney  
Stearns, Weaver  
150 West Flagler Street, Suite 2200  
Miami, FL 33130-1536

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee  
David L. Jordan, Assistant General Counsel, DCA Tallahassee