



City of Marathon Planning Commission
Monday April 15, 2019
9805 Overseas Hwy
City Hall Council Chambers
5:30 PM

1. **Call To Order**
 2. **Pledge Of Allegiance**
 3. **Roll Call**
 4. **Minutes**
 5. **Quasi-Judicial Statement**
 6. **Items For Public Hearing**
 7. **Adjournment**
-

5. Quasi-Judicial Statement

Please be advised that some of the items on the agenda are quasi-judicial in nature. If you wish to give testimony on any item please inform the Boards clerk by filling out an available sign up form. An opportunity to speak will be made available after the applicant and staff have made their presentations on each item. All testimony, including public testimony and evidence, will be made under oath or affirmation. Additionally, all persons giving testimony may be subject to cross examination. If you refuse either to be cross examined or to be sworn your testimony will not be considered. The general public will not be allowed to cross examine witnesses, but they can ask the Commission to ask questions on their behalf. Persons representing organizations must present evidence of their authority to speak for the organization.

6. Items For Public Hearing

Item 1: Consideration Of A Request For A Conditional Use Permit And Development Agreement For 1477 Overseas Highway LLC And Seasons Inc., Pursuant to Chapter 102, Articles 8 & 13 Of The City of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” And “Development Agreements,” For The Redevelopment Of The Properties As An Affordable Mobile Home Park, Located at 1477 Overseas Highway And 263 15th Street, Which Are Legally Described As The North 150 Feet of Lot 1 and 2, Part of Lots 1 and 2, Block 2 , Parrish Subdivision, Marathon, Florida, Having Real Estate Numbers 00326770-000000 and 00326760-000000. Nearest Mile Marker 48.

Item 2: Consideration Of A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking For The Redevelopment Of Hotel Resort And Commercial Uses On Property Located at 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Block 36 Lots 1-2-3-4 And Part of Lots 5-6 (Parcel A) And Westerly 15FT Unnamed

Street Adjacent Lot 1 Res B-C-C 8/11/61 And Adjacent Portion Of Flagler Street And Grassy Key Bay Bottom Adjacent Lots 1-2-3 in the Crain's Subdivision, Grassy Key, Marathon, Florida; Having Real Estate Numbers 00370940-000000. Nearest Mile Marker 58.5.

Item 3: An Ordinance Of The City Of Marathon, Florida Amending The Future Land Use Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Item 4: An Ordinance Of The City Of Marathon, Florida Amending The Official Zoning Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

Item 5: An Administrative Appeal Filed By Chad Tracy Regarding The Decision Of The City Of Marathon Denying Permit P2018-0787 Based On A Decision By The City That The Residence In Question Was Substantially Damaged Pursuant To Chapter 107, Article 12, "Floodplain Management;" For Property Located At 868 73rd Street Ocean, Lot 11, Fields Subdivision, Key Vaca, And Having Real Estate Number 00342330-000000, Nearest Mile Marker 51.



**City of Marathon
Planning Commission
Monday February 25, 2019
9805 Overseas Hwy
City Hall Council Chambers**

MINUTES

Vice Chairman Lynn Landry called the meeting of the Planning Commission to order on Monday, February 25, 2019 at City Hall Council Chambers, 9805 Overseas Hwy. at 5:30 pm.

In attendance: Planning Director George Garrett, Attorney David Migut, Senior Planner Brian Shea, Admin Assistant Lorie Mullins and members of the public.

The Pledge of Allegiance was recited.

The roll was called. Mike Cinque-present; Lynn Landry-present; Pam Dobson-present; Mike Leonard-present; Jeff Smith-absent. There was a quorum and the meeting started.

Vice Chairman Lynn Landry asked for a motion to approve the minutes of the last meeting. Mike Leonard made a motion to approve. Mike Cinque seconded. The minutes were approved 4-0.

The Quasi-Judicial statement was read into the record.

Item 1: POSTPONED BY APPLICANT. An Administrative Appeal Filed By Chad Tracy Regarding The Decision Of The City Of Marathon Denying Permit P2018-0787 Based On A Decision By The City That The Residence In Question Was Substantially Damaged Pursuant To Chapter 107, Article 12, "Floodplain Management;" For Property Located At 868 73rd Street Ocean, Lot 11, Fields Subdivision, Key Vaca, And Having Real Estate Number 00342330-000000, Nearest Mile Marker 51.

Item 2 was read into the record: Consideration Of A Request For A Conditional Use Permit For Anchorage Homes, LLC Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled "Conditional Use Permits" For The Development Of A Property Into Twelve (12) Affordable Housing Units; Located At The End Of 64th Street; Which Is Legally Described As Part Of Tract 8 & Bay Bottom South Of & Adjacent To Tract 8 & Part Of Don - Allen Rd, Section 11, Township 66 South, Range 32, Key Vaca, Monroe County, Florida; Having Real Estate Number 00338720-000000, Nearest Mile Marker 50.5.; And Providing For An Effective Date.

Brian Shea presented the item with the use of visual aids.

A Conditional Use Permit for twelve units was approved by City Council in 2015. A CUP is valid for one year, so the applicant had to reapply for approval. The site plan is new but everything is the same as in 2015, including the traffic study.

Mike Cinque asked if the Conservation Easement is going to be deeded to the City in perpetuity and asked if it could be changed in the future when the Code changes. George Garrett stated that DEP and ACOE require a

conservation easement to be recorded. An additional condition of approval is the wall being built so that nothing can encroach on that area.

George Garrett stated that Habitat for Humanity is the applicant and the units will be for ownership.

Vice Chairman Lynn Landry opened the meeting to public speakers.

Patricia Witt spoke against the item.

George Garrett responded to the speakers concerns regarding wetlands, zoning and stormwater control.

Lynn Landry asked if anyone has had ex-parte communications. All responded no.

The next public speaker was called, Alan Swierousz. His main concerns were traffic and noise.

Pam Dobson made a motion to approve the item with the additional comment that the material used for the barrier be one that does not cause additional stormwater problems.

Mike Leonard seconded. The roll was called. The motion was approved 4-0.

Items 3 and 4 were read into the record: Consideration Of An Ordinance To Amend The City Of Marathon Comprehensive Plan Modifying Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities And Intensities," To Provide For Affordable Housing Repurposing Units; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

AND: Consideration Of An Ordinance To Amend The City Of Marathon Land Development Regulations, Chapter 103, Article 3, "Use And Intensity Tables, Table 103.15.1, " Uses By Zoning District," To Provide For Affordable Housing Repurposing Units; And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

George Garrett presented the items with the use of visual aids.

Mike Leonard started the discussion noting that 325 sq. ft. for a single family unit is extremely small. George Garrett responded that they would be rental units, mostly for singles not families.

Mike Cinque commented that affordable housing is necessary, but when is there enough, who will maintain the units, and this proposed ordinance will increase density.

Attorney Tom Wright spoke on behalf of the applicant, stating that the approval of this ordinance would provide truly affordable housing in less time than building new housing and it will have less impact on infrastructure. His client wants to compete for the 300 units and the only way to do that is to amend the Comp Plan and LDRs.

Kevin Day from Republic LLC spoke on behalf of the applicant. He stated that approximately half of the units would be at the 80% income level, a quarter of the units at the 100% income level and the other quarter at the 120% income level. Rents will range from \$933-\$1530.

George Garrett stated that the item being voted on tonight is the Ordinance itself, not the conversion of the hotel units to affordable units.

Motion: Mike Cinque made a motion to recommend denial. No second.

George Garrett stated the issue is density. With this Ordinance, if a hotel has more than 15 units per acre and wanted to convert them to affordable they could do so without being in violation of the maximum densities for affordable housing.

Mike Leonard made a motion to approve Item 3. Pam Dobson seconded. The item was approved 3-0.

Mike Leonard made a motion to approve Item 4. Pam Dobson seconded. The item was approved 3-0.

Items 5 and 6 were read into the record: Consideration Of An Ordinance To Amend The City Of Marathon Comprehensive Plan Modifying Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities And Intensities," To Provide Assurances That Residences Within RL-C Zoning May Be Rebuilt; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

AND: Consideration Of An Ordinance To Amend The City Of Marathon Land Development Regulations, Chapter 103, Article 3, "Use And Intensity Tables, Table 103.15.1, " Uses By Zoning District," To Provide Assurances That Residences Within RL-C Zoning May Be Rebuilt; And Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

George Garrett presented the items. This ordinance will guarantee the right to rebuild in any residential subdivision in any residential zoning district provided the unit is built to current codes. In the event a disaster destroys any home, duplex, etc. the property owner will be allowed to rebuild in the same density. An intentionally destroyed home must adhere to current densities.

Mike Leonard made a motion to approve Item 5. Lynn Landry seconded. The item was approved 4-0.

Mike Leonard made a motion to approve Item 6. Pam Dobson seconded. The item was approved 4-0.

Motion to adjourn.

Vice Chairman Lynn Landry adjourned the meeting at 7:08 p.m.

ATTEST:

Lynn Landry – Planning Commission Vice-Chairman

ATTEST:

Lorie Mullins-Administrative Assistant
City of Marathon Planning Department

DRAFT

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.

ADA Assistance: Anyone needing special assistance at the Planning Commission Meeting due to disability should contact the City of Marathon at (305-) 743-0033 at least two days prior thereto.

(Please note that one or more Marathon City Council members may participate in the meeting.)

PLANNING COMMISSION AGENDA STATEMENT



Meeting Date: April 15, 2019
To: Planning Commission
From: George Garrett, Planning Director

Agenda Item: Consideration Of A Request For A Conditional Use Permit And Development Agreement For 1477 Overseas Highway LLC And Seasons Inc., Pursuant to Chapter 102, Articles 8 & 13 Of The City of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” And “Development Agreements,” For The Redevelopment Of The Properties As An Affordable Housing Project, Located at 1477 Overseas Highway And 263 15th Street, Which Are Legally Described As The North 150 Feet of Lot 1 and 2, Part of Lots 1 and 2, Block 2 , Parrish Subdivision, Marathon, Florida, Having Real Estate Numbers 00326770-000000 and 00326760-000000. Nearest Mile Marker 48.

APPLICANT/ OWNER: 1477 Overseas Highway LLC and Seasons Inc.

AGENT: Mike Aranda Jr. & Mike Aranda Sr.

LOCATION: The project site is located at 1477 Overseas Highway and 263 15th Street

Figure 1
Project Site



REQUEST: A request for a Conditional Use Permit and Development Agreement to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.

RECOMMENDATION:

The Planning and other City Staff met in consideration of this item on April 10, 2019 and forwards a recommendation of conditional approval for the proposed Conditional Use Permit and Development Agreement submitted by 1477 Overseas Highway LLC and Seasons Inc. The proposed Conditions follow:

Conditions of Approval

1. The properties must file a unity of title prior to the issuance of a building permit; and
2. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
 - a. Develop of ten (10) workforce / affordable housing units
 - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - i. At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - ii. Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.
3. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**
4. Clear sight triangles must be shown on the site plan at time of building permit issuance.
5. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
6. The applicant will meet all floodplain related requirements as part of the Building Permit process;
7. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
8. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility;
9. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
10. A Final Site Plan must be submitted showing the approved buildings and all civil engineering

- elements, including final grading, potable water, wastewater, and stormwater management.
11. Applicant will provide a minimum number of parking spaces required under the City’s LDRs and limit parking to the area associated with each individual unit..
 12. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
 13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
 14. The Applicant will be allowed to install a six (6) foot wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
 15. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
 16. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
 17. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

FUTURE LAND USE AND ZONING MAP DESIGNATION:

Mixed Use Commercial and Residential High (RH) & Mixed Use Commercial (MU) and Residential Mobile Home (RMH). See Figure 2A & 2B.

**Figure 2A & 2B
Future Land Use & Zoning Map**



TOTAL PROPERTY SIZE:

Total acreage: Approx. 0.46 Acres or 19,948 square feet.

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	MU	Commercial (Restaurant, Commercial Fishing, Vacation Rentals, Redevelopment)
East	R-MH	Mobile Homes

South	R-MH	Residences & Mobile Homes
West	R-MH	Commercial (Dion's) / Mobile Homes

EXISTING CONDITIONS:

The project site consists of two parcels. The parcels are currently. New development of affordable residences is underway to the south and KAIR will soon redevelop their Lighthouse Mission site to a location further south.

PROPOSED REDEVELOPMENT:

Residential: 10 Affordable Housing Units

BACKGROUND:

The proposed project seeks the redevelopment of a commercial and residential property both of which are currently vacant.

The applicant, through the Development Agreement process, wishes to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict he workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.

This report addresses the application for a Conditional Use Permit and Development Agreement. **All conditions of the Conditional Use and Development Agreement approval will have to be met before any building permit will be approved.**

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

The criteria for evaluating a Development Agreement approval are outlined in Chapter 102, Article 8, Development Agreement & Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

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

The proposed redevelopment project is located within the Residential Mobile Home (RMH) Zoning District. Per Chapter 103, Article 2, Section 103.09 of the Land Development Regulations, the district is designed to “establish areas of high-density residential uses characterized by mobile homes in mobile home parks, 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).”

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

The proposed project consists of the redevelopment of a site to include ten (10) individual residential units. The project as proposed meets the basic definition of development in the RM-H zoning district. The units will meet all requirements of the Florida Building Code.

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

- The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.**

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

The proposed project is located within the Residential High Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Residential High future land use category is to provide for high-density single-family, multi-family, and institutional residential development. The Residential High future 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”. The proposed project includes a redevelopment of vacant use into a higher density use, which is consistent with the Residential High classification.

The existing land use pattern in the project vicinity consists of a mix of residential, multi-family residential, and mobile home uses. Closer to the water near Boot Key Harbor, the area represents one of the remaining active working waterfront locations within the City. The redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

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

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

The proposed use is a redevelopment of an existing use which has not had any known impact to the health,

safety and welfare of the public. No new impacts are expected to arise with the redevelopment.

Plans submitted with the project are suitable for the approval of a Development Agreement in this matter and as they relate to Chapter 107, Article 12, 100 Year Floodplain. Final review of floodplain compliance will occur as part of building permit issuance. See Figure 3

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

Figure 3
FEMA NFIP Flood Maps



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

The existing conditions maps indicate the subject area is designated as developed land, indicating that there is no natural character to the property at this time. In addition, though found within a 'Species Focus Area' as defined in the settlement agreement for the FEMA-FWS lawsuit, "undeveloped land," as defined therein,

falls out of the considerations in the species assessment guides thus having “no impact” on the species of concern, the Eastern Indigo Snake. See figure 4.

Figure 4
Species Focus Area Habitat



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

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

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

- The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- The applicant will meet all floodplain related requirements as part of the Building Permit process;
- The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
- The applicant will obtain City approval for wastewater management through the City’s Wastewater

Utility;

- The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
- A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
- Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit..
- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;

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

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

Ingress and egress to the property is being provided on 15th Street.

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

- Clear sight triangles must be shown on the site plan at time of building permit issuance.

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

Two parking spaces per unit are required of a single family residence or duplex. The developer is providing twenty four (24) spaces as required.

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

- Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit.

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

The proposed project consists of development of a residential use. No new impacts will occur.

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

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

Solid Waste pick-up is provided under by MGS. There will be no capacity issues in this regard.

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

5. Utilities, with reference to location and availability;

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

- Wastewater: The property is currently not connected to the City sewer system. The applicant will provide wastewater and sewage collection and disposal via connecting to the City sewer system.
- Water: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant must submit a final stormwater plan before building permit issuance.
- Recreation and Open Space: This redevelopment will provide more recreation and open space than exists on site currently.
- Roadways: No additional traffic impact will occur as a result of this project.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

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

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the connection to the City Wastewater Utility will be required.

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

The project will be required to provide street trees for each unit pursuant to the requirements of the LDRs.

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

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

There will be no signs associated with the redevelopment of the site.

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

8. Required yards and other open space;

Section 106.16 established required open space for the project. The site is scarified; therefore, a twenty percent open space requirement applies. As proposed, the project will meet the minimum open space requirements.

Additionally, the property is required to provide a landscape buffer along the U.S. 1 property boundary. Section 107.70 requires a medium buffer along this property line.

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

- The Applicant will be allowed to install a six (6) foot wall with exterior facing landscape vegetation

on the U.S. 1 property boundary in lieu of a full landscape buffer.

9. General compatibility with surrounding properties; and

The project is a development of residential uses in an area of the City which is relatively dense and intense. Adjacent uses include other residences, single family, mobile homes, duplexes, and multifamily units, a day care facility, and two churches and a City park. The proposed project will be compatible with surrounding uses.

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

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

With these modifications to the proposed DA, the request is *in compliance* with the requirements of this section.

CONCLUSION:

The proposed project seeks the development of two contiguous vacant commercial and residential properties. The project furthers the intent of both the City’s Comprehensive Plan and Land Development Regulations to:

- Utilize densities allowed pursuant to the partial Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- Develop of ten (10) workforce / affordable housing units
- Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.

RECOMMENDATION:

Planning staff recommends conditional approval of the projects and suggests that the Planning Commission forward a recommendation of conditional approval for the proposed Conditional Use and Development Agreement submitted by 1477 Overseas Highway LLC and Seasons Inc.

Conditions of Approval

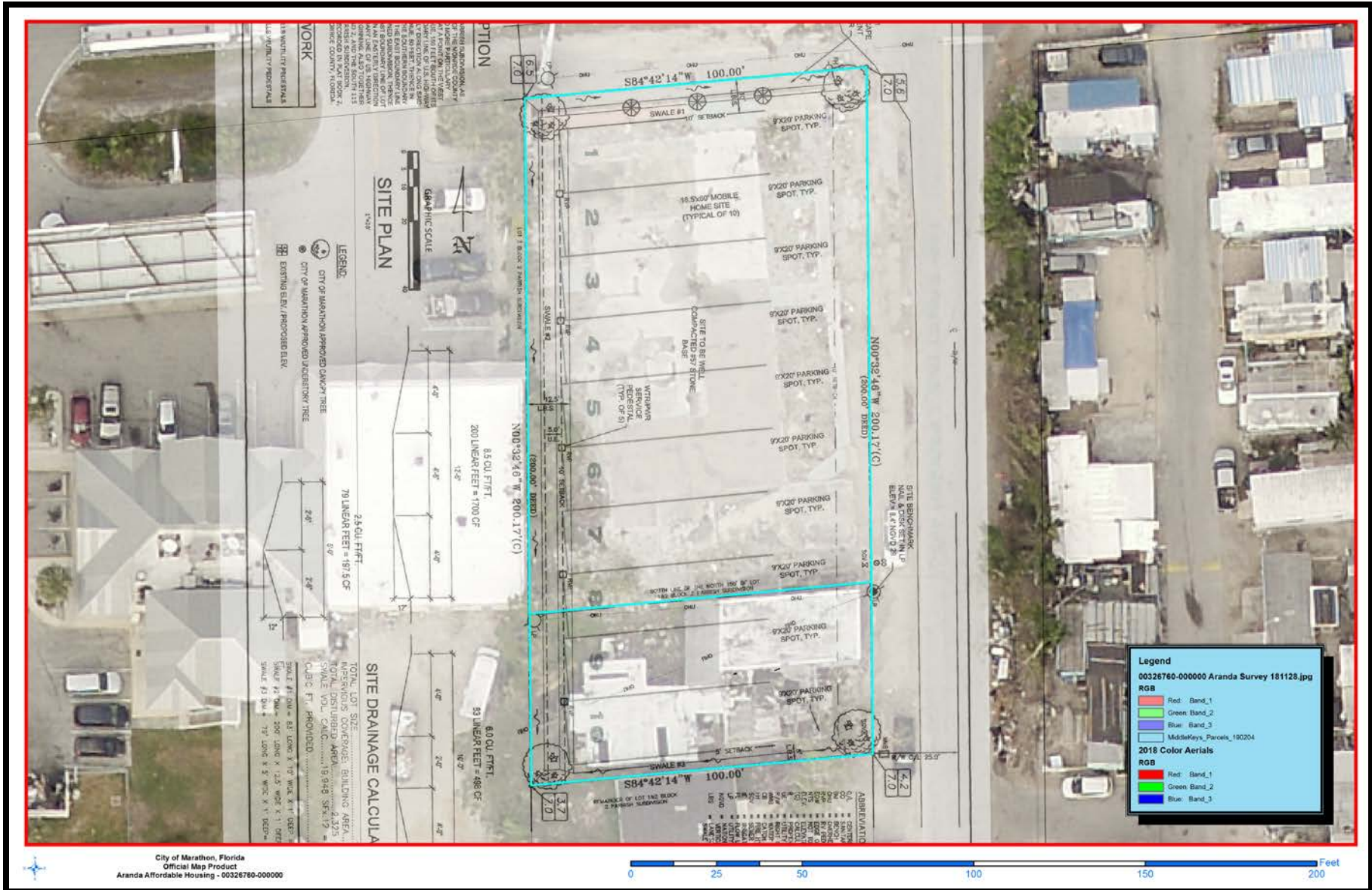
1. The properties must file a unity of title prior to the issuance of a building permit; and
2. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
 - a. Develop of ten (10) workforce / affordable housing units
 - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - i. At ten (10) years the units will be dedicated to the present site and deed restricted in

perpetuity, or

- ii. Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.

3. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
4. Clear sight triangles must be shown on the site plan at time of building permit issuance.
5. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
6. The applicant will meet all floodplain related requirements as part of the Building Permit process;
7. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
8. The applicant will obtain City approval for wastewater management through the City's Wastewater Utility;
9. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
10. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
11. Applicant will provide a minimum number of parking spaces required under the City's LDRs and limit parking to the area associated with each individual unit..
12. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The Applicant will be allowed to install a six (6) foot wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
15. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
16. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
17. The Conditional Use Development Order will constitute the Certificate of Concurrence for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

EXHIBIT 1 Site Plan



Parcel I.D. Nos.:
RE# 00326760-000000 and 00326770-000000
(Space reserved/or recording)

DEVELOPMENT AGREEMENT FOR
1477 Overseas Highway LLC and Seasons Inc.
MARATHON, FLORIDA

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF MARATHON, FLORIDA, a Florida municipal corporation (herein referred to as "City"), and 1477 Overseas Highway LLC and Seasons Inc., 1222 SE 47th Street Suite #330, Cape Coral, FL 33904, a Delaware Corporation (herein referred to as "Owner"), pursuant to Chapter 102, Article 8, of the Land Development Regulations of the City of Marathon, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, and is binding on the Effective Date set forth herein.

WITNESSETH:

WHEREAS, Owner is the owner of real property located in Marathon, Monroe County, Florida, more particularly described in Exhibit "A" (boundary survey), attached hereto and incorporated herein by reference; and

WHEREAS, Owner has submitted a proposal to develop and construct ten (10) affordable residential units; and

WHEREAS, the construction and maintenance of affordable housing within the City of Marathon is a desirable goal and will serve to preserve workforce housing in the face of economic gentrification; and

WHEREAS, the economic development afforded by this Agreement is in the best interest of both parties to this Agreement as well as the general public in the City of Marathon; and

WHEREAS, the Marathon Planning Commission held a public hearing on the 15th day of April, 2019, to consider this Agreement, and recommended approval of this Agreement; and

WHEREAS, the City Council of Marathon held public hearings on the 14th day of May and 28th day of May, 2019, to consider this Agreement; and

WHEREAS, the City has determined that this Agreement is in the public interest and is consistent with its policy to encourage the redevelopment of Marathon in a manner that provides and preserves affordable housing and will further the health, safety, and welfare of the residents of Marathon; and

WHEREAS, the Applicant will utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site

- a. Develop of ten (10) workforce / affordable housing units
- b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - i. At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - ii. Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.

WHEREAS, the Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. **THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT, and**

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. RECITALS.

The foregoing Recitals are a part of this Agreement on which the parties have relied and are incorporated into this Agreement by reference.

II. PURPOSES OF AGREEMENT.

The purposes of this Agreement are as follows:

- A. Allow the Applicant to utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
- B. To encourage redevelopment of the Property consistent with Objective 1-3.4 in the City's Comprehensive Plan.
- C. To secure the ability to construct Owner's proposed development of residences totaling ten (10) units. Implicit in this Development Agreement are the Conditions imposed in the approval of the Conditional Use Permit for this project. The Conditional Use Permit shall run contemporaneous with the Development Agreement.

III. DEFINITIONS.

For the purposes of this Agreement, all terms shall have the definitions as found in the Land Development Regulations (LDRs), Comprehensive Plan and in Chapter 163, Florida Statutes, or in other applicable Florida Statutes, and if not defined in the Code, Plan, or Statute, the term shall be understood by its usual and customary meaning.

IV. STATUTORY AND CODE REQUIREMENTS.

The parties recognize the binding effect of the Florida Local Government development Agreement Act, Sections 163.3221, et seq., Florida Statutes, as to the form and content of this Agreement and in accordance therewith set forth and agree to the following:

A. Legal Description and Ownership. 1477 Overseas Highway LLC and Seasons Inc., 1222 SE 47th St Unit 330 ,Cape Coral, Fl 33904, is the Owner of the Property, which Property is the subject of this Agreement, as described in Exhibit B, Boundary and Topographic Survey. There are no other legal or equitable owners of the subject property known to the parties to this Agreement.

B. Duration of Agreement and Submission of Permit Application. Owner shall have a period of twelve (12) months from the Effective Date of this Agreement to submit an application for a building permit with the City to commence construction of the project contemplated herein. The duration of this Agreement shall be ten (10) years from the effective date. Should the owner not commence construction within eighteen (18) months of the effective date of this Agreement, then this Agreement shall be null and void and the allocation of affordable housing contained herein shall be null and void and said allocation shall revert to the entity contributing the affordable allocations. This Agreement may be renewed or extended as provided herein. If the Owner has not complied with the terms of this section, this Agreement may be subject to termination as provided herein.

C. Building Right Allocations. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT, and

Affordable Housing is defined in Section 110.00 of the City's LDRs as: "Dwelling units which contain less than or equal to 1,800 square feet of habitable space meet all applicable requirements of the United States Department of Housing and Urban Development minimum property standards as to room sizes, fixtures, landscaping and building materials, when not in conflict with applicable laws of City; and are restricted in perpetuity or as allowed by law for a minimum 50-year period to use by households that meet the requirements of at least one (1) of the

following income categories: Very-low, low, median, moderate or middle. The requirements for these income categories are as provided in Chapter 104, "Specific Use Regulations". "

It is agreed that the affordable housing shall comply with the Moderate-income standards or Middle-income standards as set forth in Section 104.03 (d) and 104.03 (e).

Moderate-income is defined as: "A household, whose income (excluding that of fulltime students under 18 years of age) does not exceed 120 percent of the median adjusted gross annual income for households within the county;"

Middle-income is defined as: "A household, whose income (excluding that of full-time students under 18 years of age) does not exceed 160 percent of the median adjusted gross annual income within the county;"

D. Sale or Lease. Owner agrees to strictly comply with all the requirements of the City of Marathon regarding sale or leasing of the affordable housing units (general affordable pool as defined in Section 107.06(c) to be constructed as part of the project. The City hereby approves the following special condition regarding the Deed Restriction of these units as affordable:

The Applicant will utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site

- a. Develop of ten (10) workforce / affordable housing units
- b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City's LDRs and require that the units remain at the project site for ten (10) years, but
 - i. At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - ii. Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.

E. Density and Building Height. The property is located in a Residential High Zoning District as defined in the Land Development Regulations. Maximum building height permitted on the property is thirty-seven (37) feet.

F. Public Facilities, Concurrency, Impact Fees. The following identifies the public facilities that are required that will service the development of the Property: who shall provide the facilities; what new facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

1. Potable Water. Domestic potable water is provided by the Florida Keys Aqueduct Authority.
2. Electric Service. Electric service is provided by Florida Keys Electric Service.
3. Solid Waste. Solid waste service is provided by Marathon Garbage Service or its successors and assigns, as determined by the City Council.

4. Fire Service. Fire service is provided by the Marathon Fire Department.
5. Wastewater, Sewage Collection and Disposal. Wastewater and sewage collection, treatment, and disposal shall be done by connection to the City sewer system.
6. Public Recreational Facilities. Public recreational facilities are available near the property in the Marathon Community Park and the Jesse Hobbs Park.
7. Stormwater Management. There shall be no direct discharge to the City of Marathon Nearshore Waters.
8. Fire Protection. Fire sprinklers will be installed if required by City Code.
9. Concurrency. All public facilities, with the exception of Wastewater, identified above are available as of the date of this Agreement, and capacity for each is projected to be available concurrent with the impacts of development. Wastewater capacity is available through the Central Sewer system for the City of Marathon.
10. Impact Fees. The City shall waive the impact fees for the affordable units allowed pursuant to Section 111.02 F.3(f).

G. Reservations or Dedications of Land for Public Purposes. These are not contemplated or necessary for this development.

H. Local Development Permits. The following City development approvals are required for the development of the Property.

1. This Development Agreement.
2. Building and related construction permits for the structures, land clearing and landscaping. At any time any building permit is applied for, Owner shall demonstrate compliance with all applicable Federal, State and Municipal Disabled Access Regulations in effect at the time of application.
3. Local Permits for Wastewater Collection and Stormwater Runoff. Nothing in this Agreement shall preclude the parties from applying conditions in addition to Federal, State and regional permits, by mutual agreement, during final site plan review or permitting.
4. Approval of affordable BPAS allocations through the BPAS allocation process.

I. Finding of Consistency. By entering into this Agreement, the City finds that the development permitted or proposed herein is consistent with and furthers the Comprehensive Plan, applicable LDRs and the Principles for Guiding Development set forth in Section 380.0552(7), Florida Statutes.

J. Mutual Cooperation. City and Owner agree to cooperate fully and assist each other in the performance of the provisions of this Agreement.

K. Development to Comply with Permits and City Comprehensive Plan and Code Provisions. The redevelopment shall be developed in accordance with all required permits and in accordance with all applicable provisions of the City's Comprehensive Plan and Land Development Regulations in effect on the effective date of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by the City and Owner has complied with all conditions in permits issued by the City and the other regulatory entities for that building. The City agrees that any permits or certificates of occupancy to be issued by the City shall not be unreasonably withheld or delayed

L. Compliance With Permit Terms, Conditions, and Restrictions Not Identified Herein. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve Owner of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

M. Laws Governing.

1. For the duration of this Agreement, all approved development of the Property shall comply with and be controlled by this Agreement and provisions of the City's Comprehensive Plan and City Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the City Council on the date of the City's approval of this Agreement, if any. The parties do not anticipate that the City will apply subsequently adopted laws and policies to the Property, except as expressly provided in this Agreement

2. Pursuant to Section 163.3233, Florida Statutes, the City may apply subsequently adopted laws and policies to the Property only if the City holds a public hearing and determines that:

a. The new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement;

b. The new laws and policies are essential to the public health, safety, or welfare, and the City expressly states that they shall apply to the development that is subject to this Agreement,

c. The City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

d. The Agreement is based on substantially accurate information supplied by Owner. Provided, however, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to the Property.

3. If state or federal laws enacted after the Effective Date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as necessary to comply with the relevant state or Federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

N. Amendment Renewal and Termination. This Agreement may be amended, renewed, or terminated as follows:

1. As provided in Section 163.3237, Florida Statutes, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

2. As provided in Section 163.3237, Florida Statutes, this Agreement may be renewed by the mutual consent of the parties, subject to the public hearing requirement in Section 163.3225, Florida Statutes, and applicable LORs. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately fifteen (15) days before each public hearing in a newspaper of general circulation and readership in Marathon, and shall be mailed to all affected property owners before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

3. This Agreement may be terminated by Owner or its successor(s) in interest following a breach of this Agreement by the City upon written notice to the City as provided in this Agreement.

4. Pursuant to Section 163.3235, Florida Statutes, this Agreement may be revoked or modified by the City if, on the basis of substantial competent evidence, the City finds there has been a failure by Owner to comply with the terms of this Agreement.

5. This Agreement may be terminated by mutual consent of the parties.

O. Breach of Agreement and Cure Provisions.

1. If the City concludes that there has been a material breach in this Agreement by Owner, prior to revoking this Agreement, the City shall serve written notice on Owner identifying the term or condition the City contends has been materially breached and providing Owner with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events shall be considered a material breach of this Agreement:

a. Failure to comply with the provisions of this Agreement;

b. Failure to comply with terms and conditions of permits issued by the City or other regulatory entity for the development authorized by this Agreement.

2. If Owner concludes that there has been a material breach in the terms of this Agreement by the City, Owner shall serve written notice on the City identifying the term or condition Owner contends has been materially breached and providing the City with ninety (90) days from the date of receipt of the notice to cure the breach, or negotiate an amendment to this Agreement. The following events shall be considered a material breach of this Agreement:

a. Failure to comply with the provisions of this Agreement;

b. Failure to timely process any application for Site Plan approval or other development authorized by this Agreement.

3. If either party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

4. Notwithstanding any other provisions of this Development Agreement to the contrary, neither party hereto shall be deemed to be in default under this Development Agreement where delay in the construction or performance of the obligations imposed by this Development Agreement are caused by war, revolution, labor strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions, embargoes, litigation (excluding litigation between the City and the Owner), tornadoes, hurricanes, tropical storms or other severe weather events, or any other causes beyond the control of such party. The time of performance hereunder, as well as the term of this Development Agreement, shall be extended for the period of any forced delays or delays caused or resulting from any of the foregoing causes. The Owner must submit evidence to the City's reasonable satisfaction of any such delay.

P. Notices. All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by anyone of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Services as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

TO OWNER:

1477 Overseas Highway LLC and Seasons Inc.
1222 SE 47th St Unit 330
Cape Coral, Fl 33904

TO THE CITY:

Chuck Lindsey, City Manager

City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

With a copy by regular U.S. Mail to:

David Migut, City Attorney
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(305) 743-0033

Q. Annual Report. On each anniversary date of the Effective Date of this Agreement, Owner shall provide the City with a report identifying (a) the amount of development authorized by this Agreement that has been completed (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last Annual Report.

R. Enforcement. In accordance with Section 163.3243, Florida Statutes, any party to this Agreement, any aggrieved or adversely affected person as defined in Section 163.3215(2), Florida Statutes, or the State Land Planning Agency may file an action for injunctive relief in the Circuit Court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Section 163.3220-163.3243, Florida Statutes.

S. Binding Effect. This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

T. Assignment. This Agreement may not be assigned without the written consent of the parties, which consent shall not be unreasonably withheld.

U. Drafting of Agreement. The parties acknowledge that they jointly participated in the drafting of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

V. Severability. In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or validity of the remaining provisions of this Agreement

W. Applicable Laws. This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida

X. Litigation/Attorneys Fees: Venue; Waiver of Right to Jury Trial. As between the City and Owner, in the event of any litigation arising out of this Agreement, the prevailing party shall be

entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorney's fees. This includes, but is not limited to~ reimbursement for reasonable attorney's fees and costs incurred with respect to any appellate~ bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida.

THE PARTIES TO THIS AGREEMENT WAIVE THE RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

Y. Use of Singular and Plural. Where the context requires, the singular includes the plural, and plural includes the singular.

Z. Duplicate Originals; Counterparts. This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.

A.A. Headings. The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of this Agreement.

B.B. Entirety of Agreement. This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

C.C. Recording; Effective Date. The Owner shall record this Agreement in the Public Records of Monroe County, Florida, within fourteen (14) days after the date the last party signs this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the State Land Planning Agency at the Department of Economic Opportunity, Division of Community Planning, 107 Madison Street, Room 22, Tallahassee, Florida 32399 by hand delivery or registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded and received by the Owner or his agents. Owner shall also provide a copy of the recorded Agreement to the City at 9805 Overseas Highway, Marathon, Florida 33050, within the same time period. This Agreement shall become effective thirty (30) days after the date the State Land Planning Agency receives its copy pursuant to Section 163.3239, Florida Statutes.

D.D. Date of Agreement. The Date of this Agreement is the date the last party signs and acknowledges this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

WITNESSES:

OWNER

1477 Overseas Highway LLC and Seasons Inc.,

Signature

By: _____
Name: Michael Aranda, Jr.
Title: President

Name of witness (printed or typed)

Signature

Name of witness (printed or typed)

DRAFT

On the 28th day of May, 2019, The City Council of the City of Marathon approved this the Conditional Use Permit for this Agreement by Resolution 2019-XXX and this Agreement by Resolution No. 2019-YYY.

ATTEST:

CITY OF MARATHON

City Clerk

By: _____
John Bartus, Mayor

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

David Migut, City Attorney

EXHIBIT A

DRAFT

EXHIBIT B

DRAFT

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15TH STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.

WHEREAS, Request By 1477 Overseas Highway LLC and Seasons Inc. (The “Applicant”) filed an Application on June 26, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop ten (10) deed restricted affordable residential units; and

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

WHEREAS, on the 15th day of April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 14th day of May, 2019 and the 28th day of May, 2019 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

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

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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

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

Section 2. The City Council hereby approves Development Order 2019-08, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Request By 1477 Overseas Highway LLC and Seasons Inc. subject to the Conditions imposed. The Director of Planning is authorized to sign the development order on behalf of the City.

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

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 28th day of May, 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier
City Clerk

(City Seal)

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

DRAFT



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2019-08**

A DEVELOPMENT ORDER OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15TH STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.

WHEREAS, Request By 1477 Overseas Highway LLC and Seasons Inc. (The “Applicant”) filed an Application on June 26, 2017 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop ten (10) deed restricted affordable residential units; and

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

WHEREAS, on the 15th day of April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, and on the 14th day of May, 2019 and the 28th day of May, 2019 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

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

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on

the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

FINDINGS OF FACT:

1. The applicant will develop ten (10) deed restricted affordable residential units with the following determinations:
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

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

Conditions of Approval

1. The properties must file a unity of title prior to the issuance of a building permit; and
2. Utilize densities allowed pursuant to the Residential – Mobile Home (R-MH) zoning associated with a portion of the site
 - a. Develop of ten (10) workforce / affordable housing units
 - b. Deed restrict the workforce / affordable units for a minimum of 50 years pursuant to the City’s LDRs and require that the units remain at the project site for ten (10) years, but
 - i. At ten (10) years the units will be dedicated to the present site and deed restricted in perpetuity, or
 - ii. Moved or rebuilt on an alternate site to be deed restricted in perpetuity at that location.
3. The Applicant must obtain and transfer the affordable housing units in excess of what the City has recognized as legally established on the property, to be transferred via the Transfer of Building Rights (TBR’s), BPAS process, or any other legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AND DEVELOPMENT AGREEMENT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY MARKET RATE RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.
4. Clear sight triangles must be shown on the site plan at time of building permit issuance.
5. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
6. The applicant will meet all floodplain related requirements as part of the Building Permit process;
7. The applicant will obtain City approval of the stormwater management system prior to Building Permit issuance;
8. The applicant will obtain City approval for wastewater management through the City’s Wastewater Utility;
9. The applicant will obtain sign permits for any signs erected on the property, as required under the Code; and
10. A Final Site Plan must be submitted showing the approved buildings and all civil engineering elements, including final grading, potable water, wastewater, and stormwater management.
11. Applicant will provide a minimum number of parking spaces required under the City’s LDRs and limit parking to the area associated with each individual unit..
12. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
13. The applicant will obtain approval of final buffering, landscaping, and lighting plans and install all elements of such in coordination with the City staff as needed prior to Certificate of Occupancy;
14. The Applicant will be allowed to install a six (6) foot wall with exterior facing landscape vegetation on the U.S. 1 property boundary in lieu of a full landscape buffer.
15. The affordable units must be deed restricted prior to issuance of certificate of occupancy.
16. The individual units proposed shall meet all conditions of the Florida Building and Fire Codes, the conditions of the Conditional Use Permit and Development Agreement and Code Concerning the construction and rental of affordable housing units, Chapter 104, Article 1, Section 104.03 of the LDRs.
17. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination shall run contemporaneous with the term and timing requirements of the Development Agreement.

VIOLATION OF CONDITIONS:

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

CONCLUSIONS OF LAW:

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

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

EFFECTIVE DATE:

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

Date

George Garrett
Director of Planning

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

2019.

Diane Clavier, City Clerk

NOTICE

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

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

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to *Mike Aranda, 1222 SE 47th Street #330, Cape Coral, FL 33904*, this ___ day of _____, 2019.

Diane Clavier City Clerk

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A REQUEST FOR A DEVELOPMENT AGREEMENT REQUESTED BY 1477 OVERSEAS HIGHWAY LLC AND SEASONS INC., PURSUANT TO CHAPTER 102, ARTICLES 8 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “DEVELOPMENT AGREEMENTS,” FOR THE REDEVELOPMENT OF THE PROPERTIES AS TEN (10) AFFORDABLE HOUSING RESIDENCES LOCATED AT 1477 OVERSEAS HIGHWAY AND 263 15TH STREET, WHICH ARE LEGALLY DESCRIBED AS THE NORTH 150 FEET OF LOT 1 AND 2, PART OF LOTS 1 AND 2, BLOCK 2 , PARRISH SUBDIVISION, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00326770-000000 AND 00326760-000000. NEAREST MILE MARKER 48.

WHEREAS, Request By 1477 Overseas Highway LLC And Seasons Inc. (The “Applicant”) filed an Application on February 201, 2019 for a Conditional Use Permit and Development Agreement pursuant to Chapter 102, Articles 8 and 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS; the Applicant proposes to develop ten (10) deed restricted affordable residential units; and

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

WHEREAS, on the 15th day of April, 2019, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

WHEREAS, and on the 14th day of May, 2019 and the 28th day of May, 2019 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Development Agreement pursuant to Chapter 102, Article 8 of the LDRs; and

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

WHEREAS, the purpose of the Conditional Use Permit and Development Agreement is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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

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

Section 2. The City Council hereby approves the document attached hereto as Exhibit “A”, granting 1477 Overseas Highway LLC And Seasons Inc., Inc. a Development Agreement subject to the Conditions imposed.

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

PASSED AND APPROVED by the City Council of the city of Marathon, Florida, this 28th day of May, 2019.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier
City Clerk

(City Seal)

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

David Migut, City Attorney

DRAFT

**EXHIBIT A
DEVELOPMENT AGREEMENT**

DRAFT

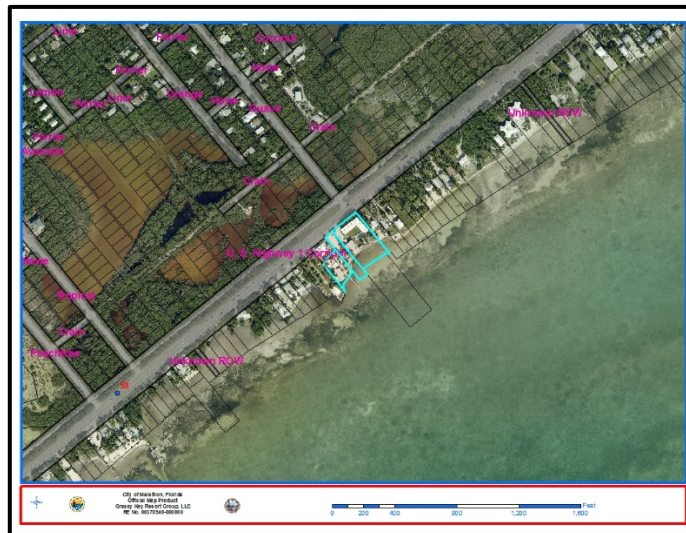
PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: April 15, 2019
To: Planning Commission
From: George Garrett, Planning Director

Agenda Item: Consideration Of A Request By Grassy Key Resort Group, LLC For A Conditional Use Permit and Development Agreement Pursuant to Chapter 102, Articles 8 and 13 Of The City of Marathon Land Development Regulations (LDRs) Entitled “Development Agreement” And “Conditional Use Permits” Respectively, Seeking For The Redevelopment Of Hotel Resort And Commercial Uses On Property Located at 58182 Overseas Highway, Which Is Legally Described As Township 65, Section 24, Range 33; Bk 36 Lts 1-2-3-4 And PT Lts 5-6 (Parcel A) And Wly 15FT Unnamed ST Adj Lot 1 Res B-C-C 8/11/61 And Adj Portion Of Flagler Street And Grassy Key Bay Bottom Adj Lts 1-2-3 in the Crains Subdivision, Grassy Key, Marathon, Florida; Having Real Estate Numbers 00370940-000000. Nearest Mile Marker 58.5.

APPLICANT/ OWNER: Grassy Key Resort Group, LLC
AGENT: Lesley Rhyne
LOCATION: The project site is located at 58182 Overseas Highway at nearest mile marker 58. See Figure 1.

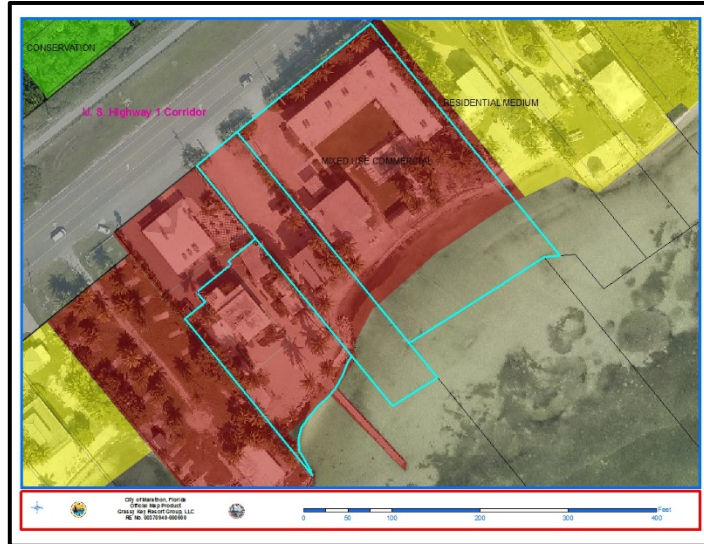
**Figure 1
Project Site**



REQUEST: A Conditional Use Permit and Development Agreement for development of the subject property having the real estate numbers 00370940-000000.

FUTURE LAND USE MAP DESIGNATION:
Mixed Use Commercial (MUC). See Figure 2.

**Figure 2
Future Land Use Map**



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

**Figure 3
Zoning Map**



LOT SIZE:

Total acreage 2.24 acres or 97,601 square feet of upland.

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	Conservation-Native Area and Residential Conservation	Crain Subdivision, Grassy Key
East	Mixed Use and Residential Medium	Residential Homes and Vacant Lots
South	Atlantic Ocean	N/A
West	Mixed Use and Residential Medium	Crain Subdivision, Hideaway Café, White Sands Inn, and Rainbow Bend

EXISTING CONDITIONS:

The project site consists of three previously contiguous developed lots now consolidated into one real estate number – 00370970-000000. The parcel is currently developed, but were formerly the location of Casa Del Sol Resort and the Yellowtail Inn.

The Cosa Del Sol and portions of the Yellowtail resort has been partially rehabilitated. However, ten (10) transient units will be transferred to the proposed redevelopment project from the previous site of Bonefish Resort (RE No. 00371060-000000). Bonefish Resort (RE No. 00371060-000000) will be considered for a five unit Transient RV Resort.

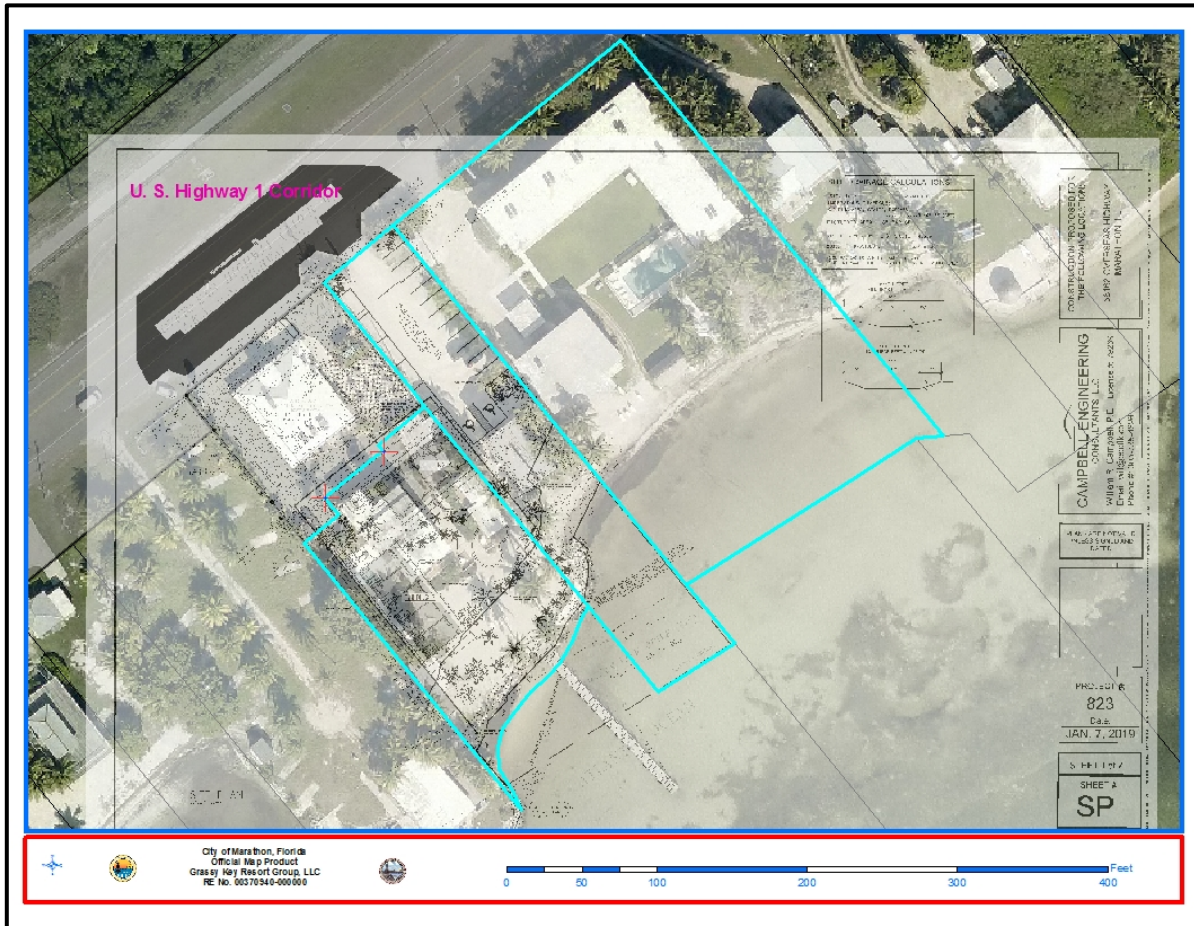
Transient Units:	23 Units (three properties and two motels)
Commercial Floor Area:	2,674

PROPOSED REDEVELOPMENT:

Transient Units:	33 Units (one property and one motel)
Commercial Floor Area:	2,674

See Figure 4 for Site Plan layout.

**Figure 4
Proposed Redevelopment Site Plan**



BACKGROUND:

The proposed project is a redevelopment of commercial property to redevelop into a hotel resort in the Mixed Use zoning classification. This report addresses Conditional Use Permit and Development Agreement applications.

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

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

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

CRITERIA

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

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

The proposed project consists of the redevelopment of existing commercial use within the Mixed Use Zoning District. Section 103.15, Table 103.15.2, “Uses By Zoning District,” establishes whether specific uses are allowed as of right, limited, accessory or conditional use permit. That table shows that Hotel/Motel/Resort lodging uses are allowed as Conditional Uses in the MU District. Conditional Use Permit review is intended to allow a broader view of the potential impacts of a project on adjacent uses and on City concurrency related resources such as road capacity, solid waste, sewer, and potable water availability.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed. Using the property area, the proposed use can have up to xx hotel units. Table 103.15.3 further qualifies the allowed range of intensities based on the intensity of retail use.

Development Type	Existing	Proposed	Max Allowed	% Total Area
Transient Units	38	38	66,196	68%
Commercial Floor Area	370	2,674	3,565	4%

The project as proposed meets the basic definition of development in the MU zoning district.

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

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

The proposed project is located within the Mixed Use Commercial Future Land Use District. Policy 1-3.1.4 of the City of Marathon Comprehensive Plan states that the “principal purpose of the Mixed Use Commercial land use category is to provide for the establishment of mixed use

development patterns and to recognize established mixed use development patterns within the City.” The proposed project includes redevelopment of an existing conditional use (Hotel, Motel, Resort) into a similar conditional use (Hotel, Motel, Resort), which is consistent with the Mixed Use classification.

The existing land use pattern in the project vicinity consists of mangroves to the North, Atlantic Ocean to the South, Residential homes to the east and west, and commercial and residential uses in between.

Otherwise, the redevelopment of the site will result in significant improvement to the site development quality, including upgraded landscaping, stormwater management, and architecture. The improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

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

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

The proposed conditional use is a redevelopment of an existing use which has not had any known impact to the health, safety and welfare of the public. No new impacts are expected to arise with the redevelopment. The infrastructure on the site will be upgraded and the site heavily landscaped, creating a substantial improvement to the sites.

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

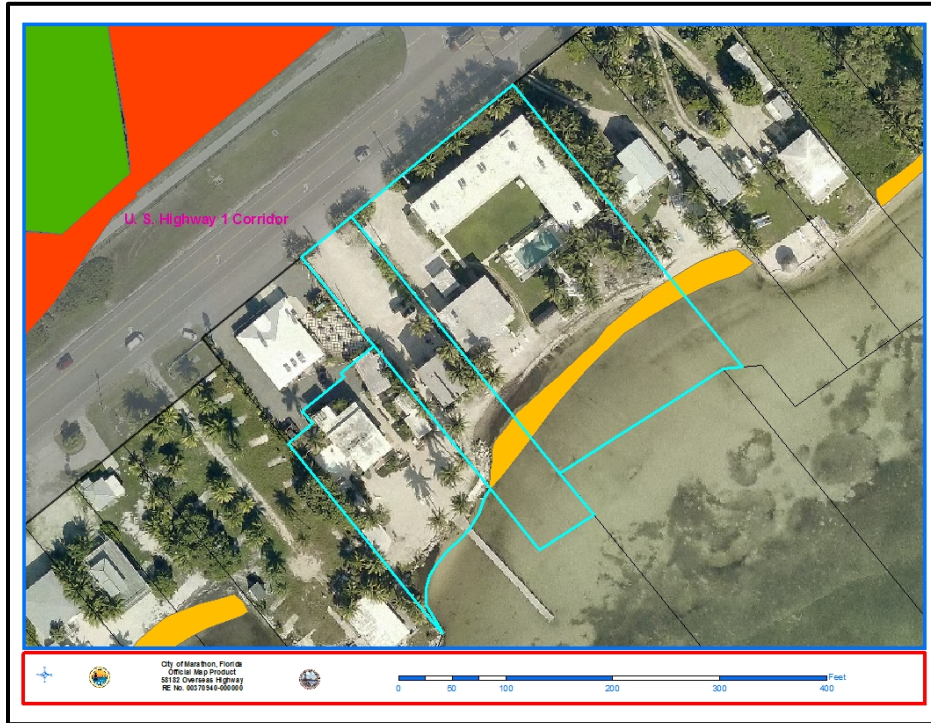
Therefore, the request is ***in compliance*** with the requirements of these sections.

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

The existing conditions maps indicate the subject area is designated as Developed Land. A site inspection showed the current conditions as scarified with existing buildings and asphalt parking lot. Two of the parcels are designated as Turtle Nesting Beaches. Figure 6 shows the nesting beach areas in yellow. The structure that exist currently on site are within the turtle nesting beach setback. The applicant is proposing the new structures to be no further into the setback than the existing, and where possible to locate them further from the setbacks.

The area under redevelopment is not a turtle nesting beach. The remaining area that falls under the turtle nesting beach is limited to a berm and walkover which has been permitted under P2018-2251 (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (repair dock). All development in designated as turtle nesting beaches must comply with Chapter 14, Article II of the Code of Ordinances.

Figure 6
Turtle Nesting Beach Map



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

Site landscaping will be selected from Table 107.68.1, Appendix A, Article 8, Section 107 of the City of Marathon Code of Ordinances. The native vegetation will improve the environmental quality of the site and reduce irrigation needs. The applicant has submitted a detailed vegetation plan that is compliant with the landscaping requirements. Additionally, the applicant will provide additional landscaping to reduce light spillage onto neighboring properties and turtle nesting beaches.

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

- All lighting, beach raking, and redevelopment must comply with Article II of Chapter 14 of the Code of Ordinances.
- Setbacks in front of Casa del Sol is defined in permit P2019-0017 (Exterior remodel), P2019-0325 (dock repair).

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

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

The applicant has provided a breakdown of the proposed occupancy of the onsite buildings. The “Trip Generation Analysis” schedule provided in the Traffic Study indicated that there will be an increase in trip generation from the existing use to the proposed use for the site. The traffic study determined that based on the expected trip generation for the project, there would be no adverse effect on the operating characteristics of U.S. 1. The submitted study finds that the proposed expansion will not inhibit the safe flow of traffic travelling through the City of Marathon, and that no additional improvements are warranted on U.S. 1.

Ingress and egress to the property is being provided through driveways onto Overseas Highway. The trip generation analysis of the traffic study shows that currently the existing uses generate 304 daily trips from the 38 units. With the proposed hotel/resort 32 units, residential units, and commercial space, the daily trip would be a total of 394 total. Therefore, the proposed redevelopment would create an increase in trip generation by 90 trips.

Section 107.43 requires site triangles where the access drive intersects with the street. Clear site triangles must be shown on the site plan at time of building permit issuance.

The redevelopment of these properties will require additional fire suppression measures. The applicant has coordinated with the Fire Marshall on the proposed locations of new fire hydrants as well as fire sprinklers. Additional fire truck vehicle access and turnarounds are required.

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

- Clear sight triangles must be shown on the site plan at time of building permit issuance.
- All conditions of the Fire Marshall must be met prior to permit issuance.

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

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

Use	Code Citation	Requirement	Spaces Required
Hotel or Motel	107.47.A	1 per every 3 employees	2
		1 per guest room	32
Retail		3 per 1,000 SF	6
		1 per employee at largest shift	2
Total Required			59
Total Provided			59

Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 59 spaces, three (3) handicapped spaces are required. Parking space sizes are 9' x 18' for 90 degree parking, and handicapped spaces are 12' x 21' as required by Code. The proposed site plan is consistent with the code requirements for parking and aisle width. Additionally, the applicant proposed that the parking for the hotel be handled through a valet, allowing for stacking parking under the motel structures.

The Code also requires bicycle parking to be provided for educational facilities, multifamily dwellings, commercial, institutional and industrial uses, as well as all developments adjacent to a bike path, at a rate of one (1) space for every ten (10) parking spaces, per Section 107.48. The developer has proposed a bike rack for the project// six bicycle spaces on site.

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

- Bike racks must be shown on the final site plan.

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

The proposed project consists of redevelopment of three existing commercial use. New lighting will be necessary for this project. The applicant has provided a typical lighting plan which conforms with the City of marathon LDR's. A more detailed lighting plan must be submitted for permitting purposes. The applicant's detailed plans should achieve the net result of no detrimental noise, glare or odors being generated by any of the uses.

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

- A detailed lighting plan must be submitted before the project is permitted, including turtle lighting.

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

5. Utilities, with reference to location and availability;

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

- Wastewater: The applicant is currently working with the Utilities department to accommodate the wastewater needs, and assess the additional impacts and wastewater fees.
- Water: The Florida Keys Aqueduct Authority currently provides potable water for the facility. Staff recommends a separate meter for irrigation and landscaping.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- Recreation and Open Space: This redevelopment will have a de minimis impact on recreation and open space.
- Roadways: The applicant is redeveloping the site with a higher intensity than was contained within the prior development; therefore, a traffic study was completed to analyze the impact on transportation facilities.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities since existing uses are being replaced in kind.

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

- City approval is required for the stormwater management system prior to Building Permit Approval.
- City approval of the modified connection to the City Wastewater Utility will be required.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for a one year.

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

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered by properties zoned RM, requiring a ‘high’ boundary buffer. The preliminary landscape plans show that this buffer is maintained. The final landscape plans must be approved by the City Biologist. The existing Casa del Sol property has a driveway within the buffer area that provides parking and access under the structure. Staff recommends landscaping as much as possible within the area without hindering the existing vehicle access.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along U.S. 1. The proposed landscape plan meets the minimum requirements. According to the Code, four canopy trees shall be planted in and about access points.

In additional smaller accent trees shall be planted every 120 feet and staggered midway between the large canopy trees. Additionally, all parking not located to the rear of buildings shall be screened from the right-of-way by a landscaped buffer along U.S. 1, including a continuous hedge or combination hedge and earth berm providing a three-foot high visual screen within two (2) years of planting.

Table 103.15.2 outlines setback requirements in the MU district as follow: front yard 0 – 30’; side yard 1 and 2, 0 – 10; interior side yard, 10; and, street side, 0-5’. Accessory structures, including pools, have a 10’ setback.

Table 106.28.1 outlines setbacks requirements for a principle structure on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL. A resource buffer distance is set at a 20 foot minimum.

This plan shows a 10’ setback on the front yard, 3’ setback on the western side, and a 14’ setback on the eastern side yard, and 50’ rear yard setback.

Section 107.36 A.1 states that for parcels in the MU district the required interior yard setback may be reduced through the conditional use process. The existing use has an interior setback of 10’, therefore so long as the proposed redevelopment meets all other setback requirements, the interior side setback is allowed at the proposed 10’.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10	10	Y
East Side	0-10	20	14	N
West Side	0-10	N/A	3	Y
Shoreline	10	N/A	50	N

As mentioned above, the existing structures are further into the setbacks than is currently proposed. These are being pulled back to the greatest extent practicable. Additionally, TRC review can reduce the required landscape buffer distance in half. Therefore, the 20’ buffer can be reduced to 10’ making the existing driveway as compliant as possible.

Parking area landscaping is required by Section 107.66 of the Code. The City Biologist has reviewed the submitted parking area landscape plan and has found it to be in compliance with the code.

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

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

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

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. Final lighting plans will be submitted along with final landscaping plans, and will include verification from the landscape architect that all provisions of the article are met.

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

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

8. Required yards and other open space;

Section 106.16 established required open space for the project. The site is scarified; therefore, a twenty percent open space requirement applies. Additionally, the shoreline open space requirement is 70% is open. For the 5,163 SF buffer area, the maximum coverage is 1,549 SF by accessory structures. The applicant proposes 1,000 SF, which exceeds the open space requirement.

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

9. General compatibility with surrounding properties; and

The project is a redevelopment of long standing existing uses in an area of the City which has been acknowledged as an area suitable for redevelopment. Adjacent uses include a commercial establishment and residential uses. A redevelopment of existing hotels is expected to be fully compatible with these uses. The proposed project represents improvement to the current state of prior development, and is expected to increase compatibility with surrounding properties.

Section 107.40 restricts the height of buildings to 37' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings range from 31' to 33'.

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

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

Section 104.25 Hotels or Motels contains special requirements.

The following criteria are applicable to this redevelopment:

- As a condition of development, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.

- All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of twenty (20) percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units.

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

CONCLUSION:

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

The proposed redevelopment consists of the replacement and enhancement of a long standing existing commercial use. As such the development, including the overall upgrading and improvement of the site, furthers the policies for development in the City and is consistent with the Comprehensive Plan and Land Development Regulations. The project is compatible with surrounding uses, and is not expected to create a nuisance, traffic congestion or threat to public, health, safety or welfare.

RECOMMENDATION:

The Planning staff recommends that the Planning Commission forward a recommendation of conditional approval of the Motel/Hotel/Resort to the City Council. The proposed conditions of approval are listed below.

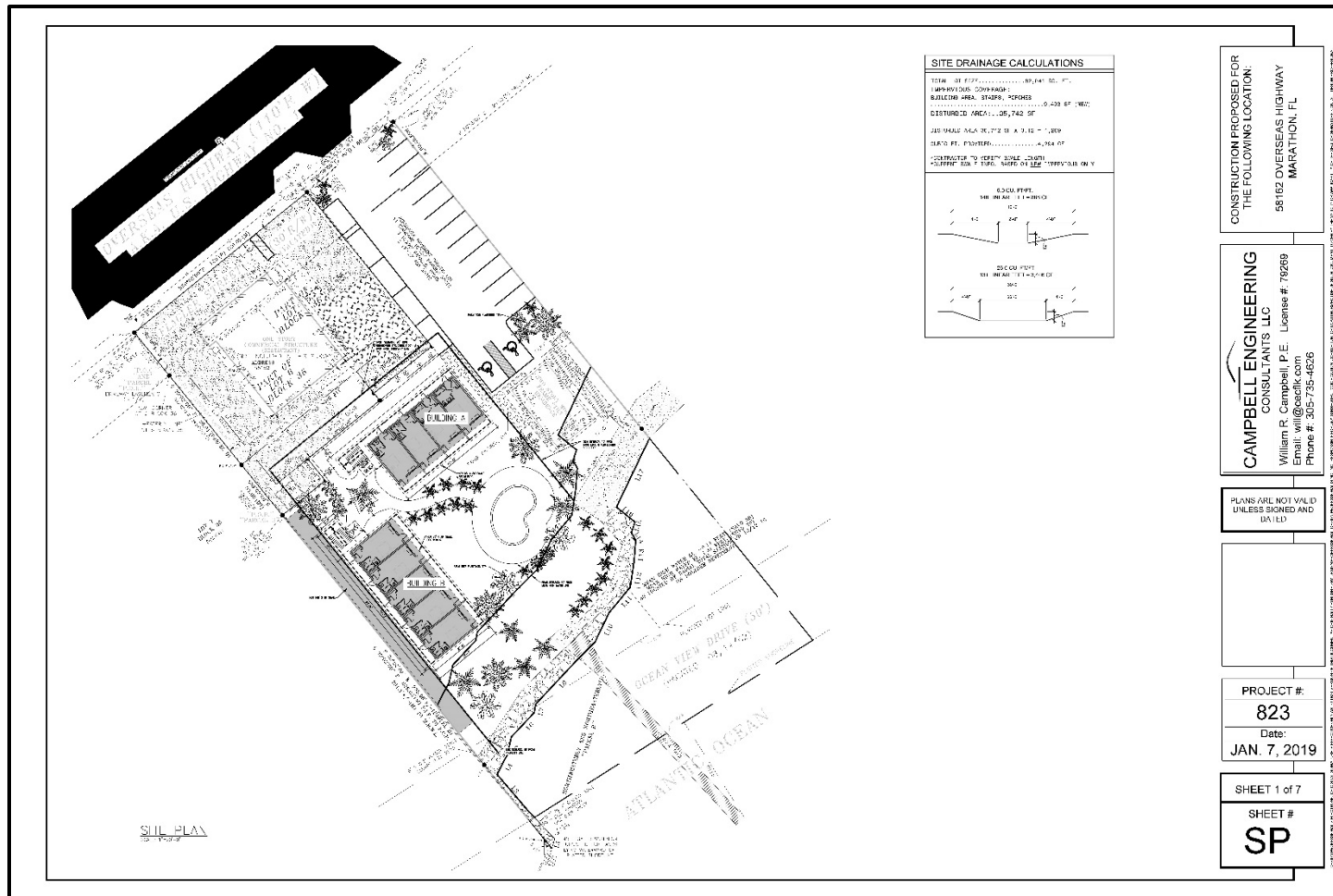
Conditions of Approval

- 1) Redevelopment area not in turtle nesting beach. Area within the turtle nesting beach shall comply with setbacks established in P2018-0251, (Site Work), P2019-0017 (Exterior remodel), P2019-0325 (dock repair).
- 2) Clear sight triangles must be shown on the site plan at time of building permit issuance.
- 3) A detailed lighting plan must be submitted before permit issuance;
- 4) City approval is required for the stormwater management system prior to Building Permit Approval.
- 5) City approval of the modified connection to the City Wastewater Utility will be required;
- 6) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year;
- 7) All signs and turtle lighting will be reviewed and approved for compliance with the City of Marathon LDR's;
- 8) A final landscaping plan must be submitted prior to building issuance;
- 9) As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.

- 10) All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units;
- 11) The applicant will obtain any required permits from ACOE and DEP prior to building permit issuance;
- 12) The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshall;
- 13) The applicant will meet all floodplain related requirements as part of the Building Permit process;

Attachments:

Attachment: Proposed Site Plan A



SITE DRAINAGE CALCULATIONS	
TOTAL IMPERVIOUS COVER	89,144 SQ. FT.
TOTAL IMPERVIOUS COVER	89,144 SQ. FT.
BUILDING AREA, STAIRS, ROOFS	89,144 SQ. FT.
DISTRICTS (AREA) - 0.25, 0.15, 0.05	89,144 SQ. FT.
PER IMPAV. AREA 78,772 SQ. FT. @ 0.15	11,815.80 SQ. FT.
PER IMPAV. AREA 8,372 SQ. FT. @ 0.05	418.60 SQ. FT.
TOTAL IMPAV. AREA 87,144 SQ. FT.	12,234.40 SQ. FT.
CONVERT TO FEET - 1:1000	12,234.40 SQ. FT.
CONVERT TO FEET - 1:1000	12,234.40 SQ. FT.

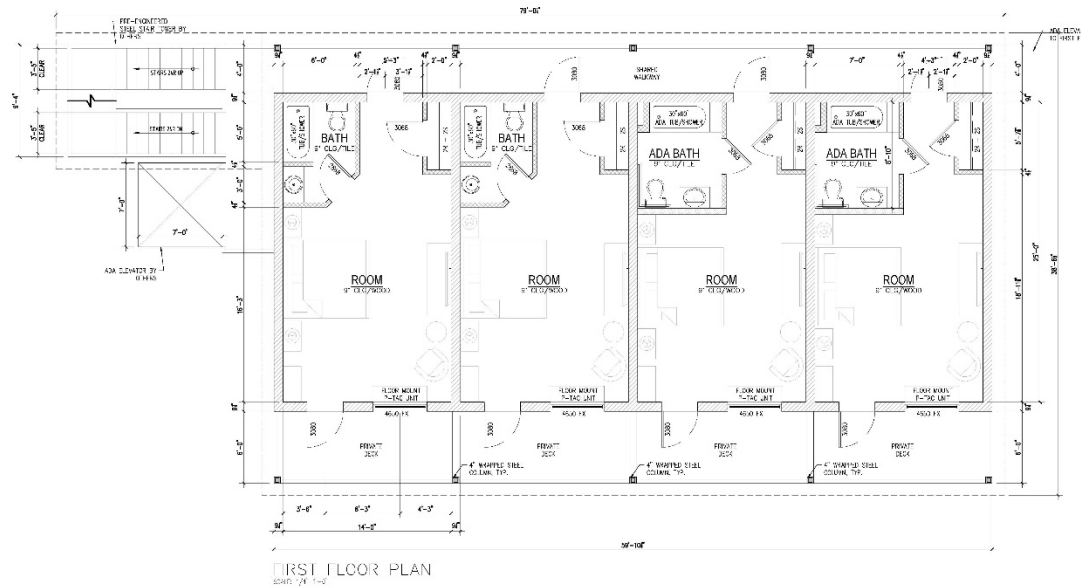
CONSTRUCTION PROPOSED FOR THE FOLLOWING LOCATION:
58162 OVERSEAS HIGHWAY
MARATHON, FL

CAMPBELL ENGINEERING CONSULTANTS, LLC
William R. Campbell, P.E. License # 78269
Email: wrc@campbell.com
Phone # 305-735-4626

PLANS ARE NOT VALID UNLESS SIGNED AND DATED

PROJECT #:
823
Date:
JAN. 7, 2019

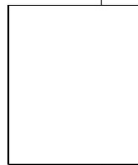
SHEET 1 of 7
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CONSTRUCTION PROPOSED FOR
THE FOLLOWING LOCATION:
58162 OVERSEAS HIGHWAY
MARATHON, FL

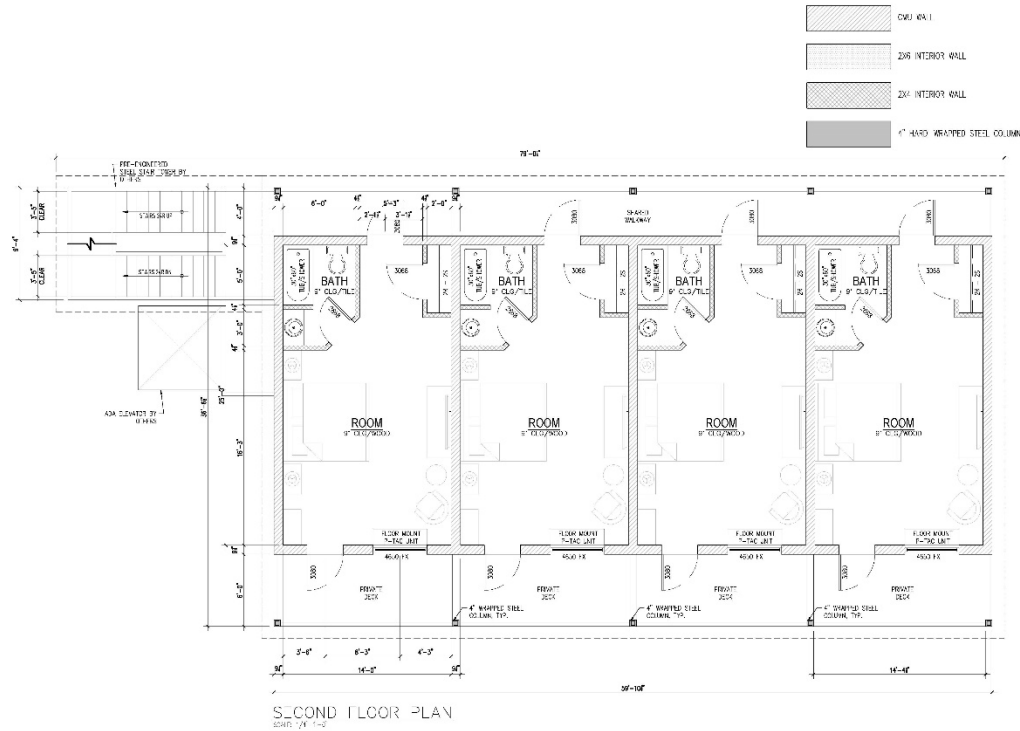
CAMPBELL ENGINEERING
CONSULTANTS LLC
William R. Campbell, P.E. License #: 79289
Email: will@cedaik.com
Phone #: 305-735-4628

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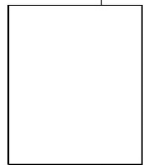
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SHEET #
A-1



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58162 OVERSEAS HIGHWAY
MARATHON, FL

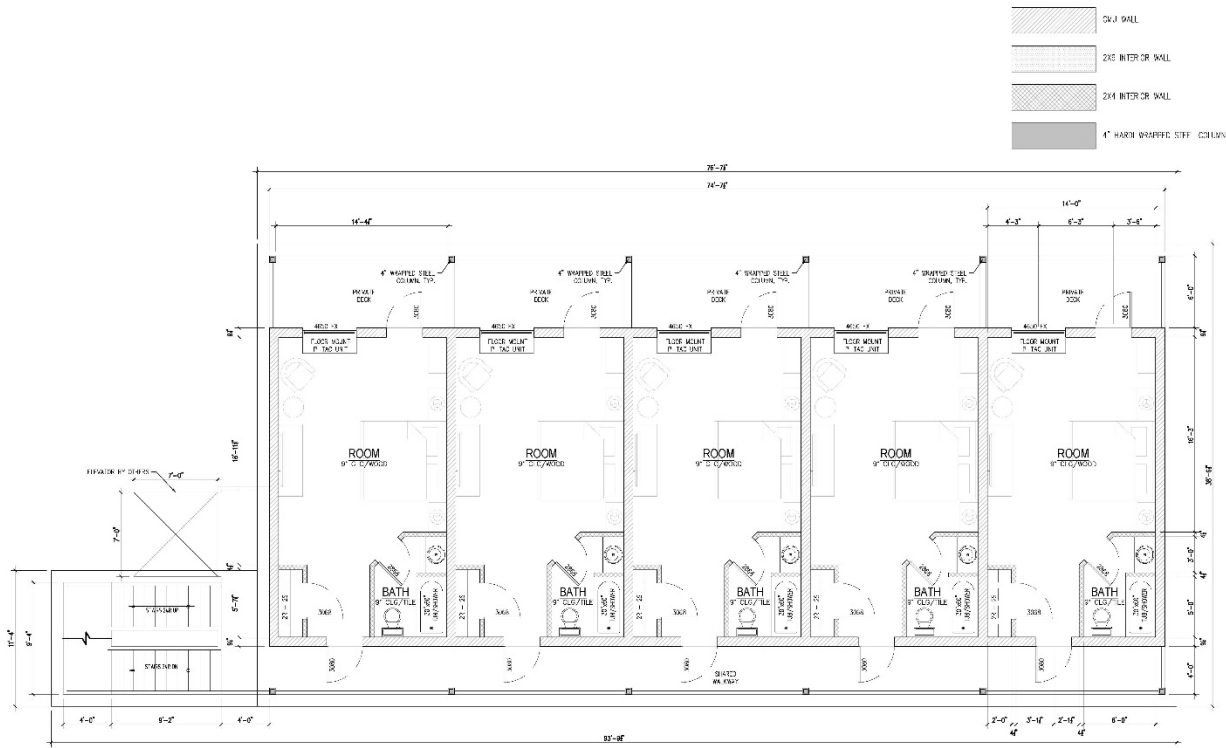
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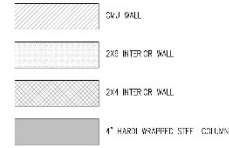


PROJECT #:
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Date:
JAN. 7, 2019

SHEET 3 of 7
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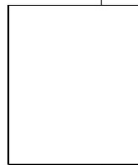
BUILDING B FLOOR PLAN
 SCALE: 1/8" = 1'-0"
 SHEET: A-3



CONSTRUCTION PROPOSED FOR
 THE FOLLOWING LOCATION:
 58162 OVERSEAS HIGHWAY
 MARATHON, FL

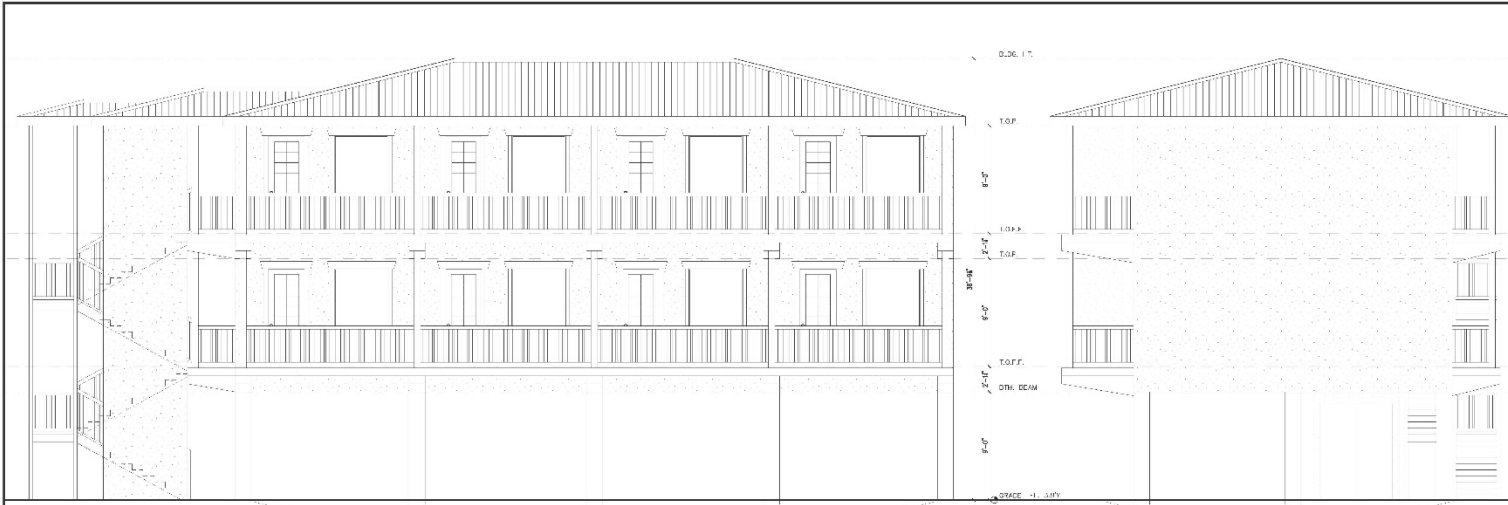
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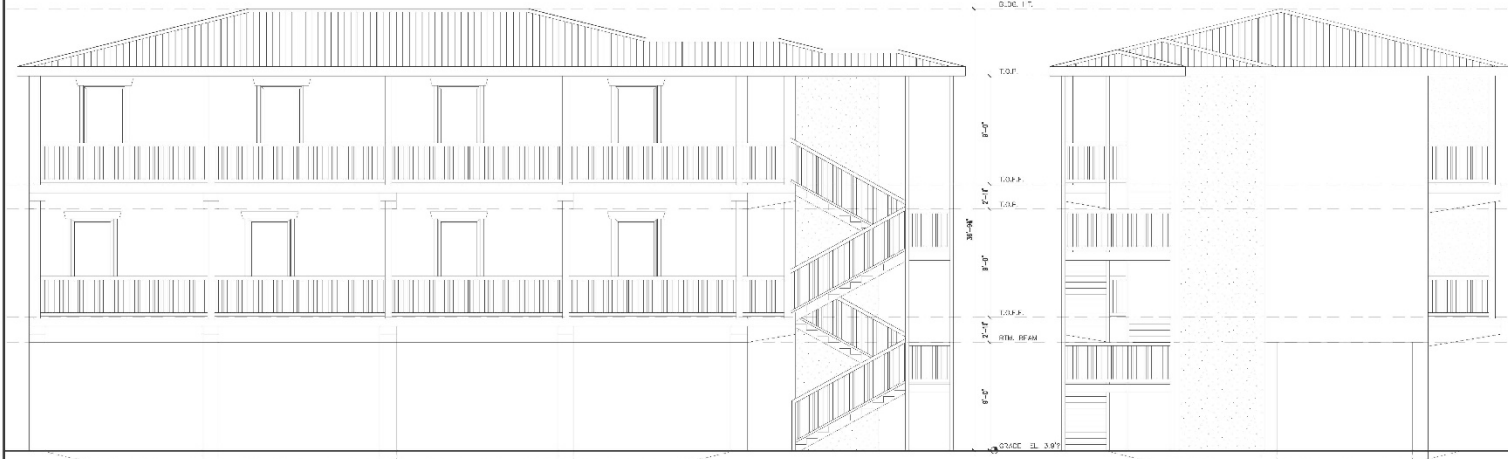
PROJECT #
823
 Date:
JAN. 7, 2019

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 SHEET #
A-3



REAR ELEVATION - BUILDING A
SCALE: 1/4" = 1'-0"

LEFT ELEVATION - BUILDING A
SCALE: 1/4" = 1'-0"



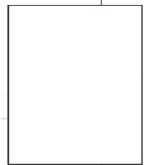
FRONT ELEVATION - BUILDING A
SCALE: 1/4" = 1'-0"

RIGHT ELEVATION - BUILDING A
SCALE: 1/4" = 1'-0"

CONSTRUCTION PROPOSED FOR
THE FOLLOWING LOCATION:
58162 OVERSEAS HIGHWAY
MARATHON, FL

CAMPBELL ENGINEERING
CONSULTANTS LLC
William R. Campbell, P.E. License #: 79289
Email: will@cecnk.com
Phone #: 305-795-4626

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DATED

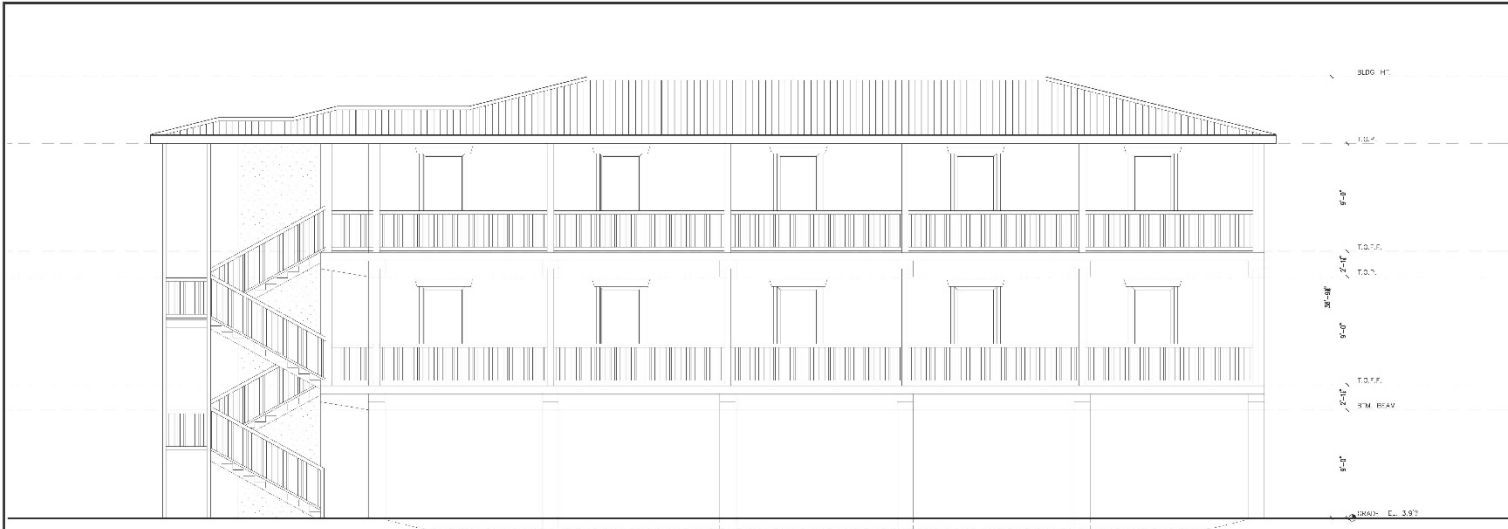


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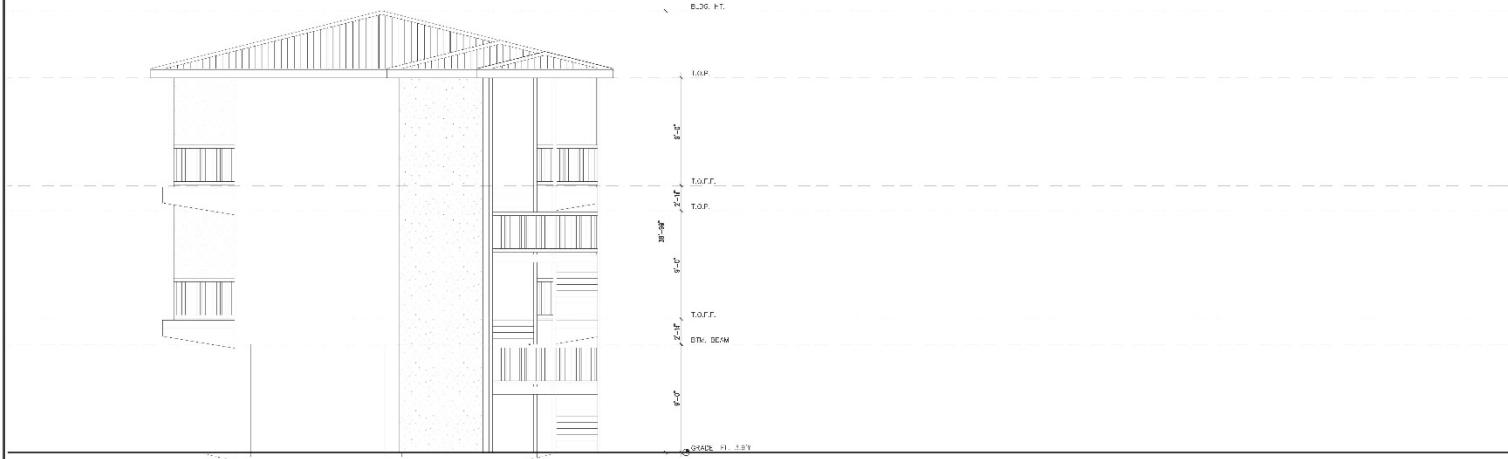
SHEET 5 of 7

SHEET #
A-4

ALL DIMENSIONS UNLESS OTHERWISE NOTED. ALL FINISHES TO BE DETERMINED BY THE ARCHITECT. ALL MATERIALS TO BE APPROVED BY THE ARCHITECT. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL, STATE AND FEDERAL CODES. THE ARCHITECT'S OFFICE SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE ARCHITECT'S OFFICE SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE ARCHITECT'S OFFICE SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.



FRONT ELEVATION - BUILDING B
SCALE: 1/4" = 1'-0"



LEFT ELEVATION - BUILDING B
SCALE: 1/4" = 1'-0"

CONSTRUCTION PROPOSED FOR
THE FOLLOWING LOCATION:
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MARATHON, FL

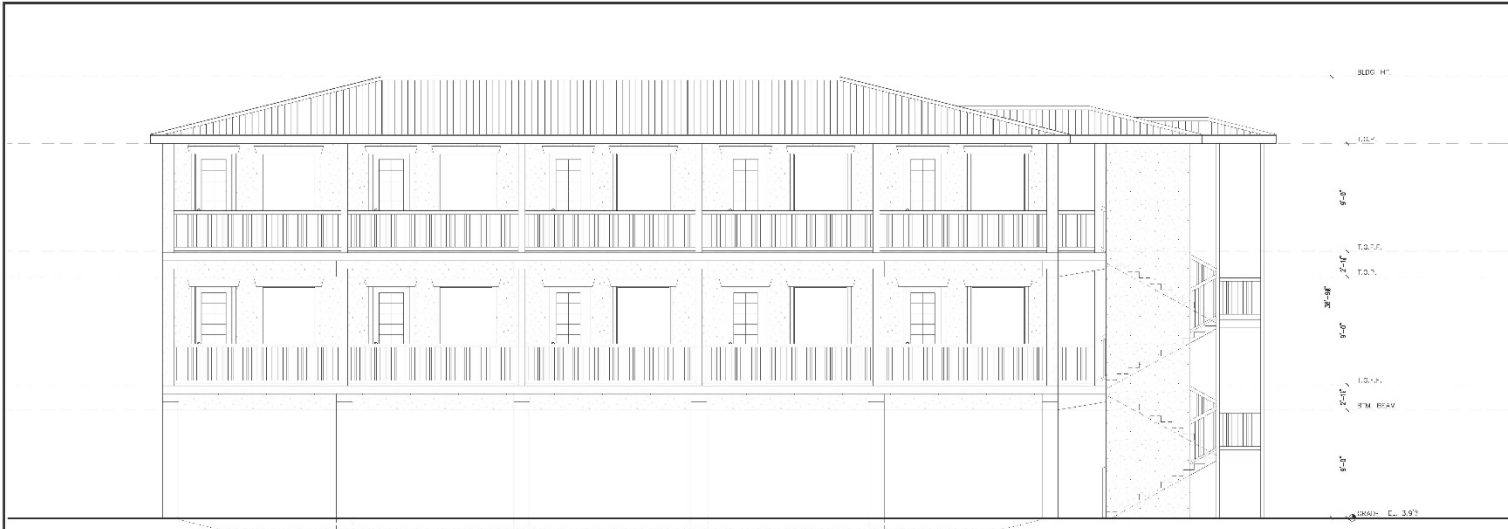
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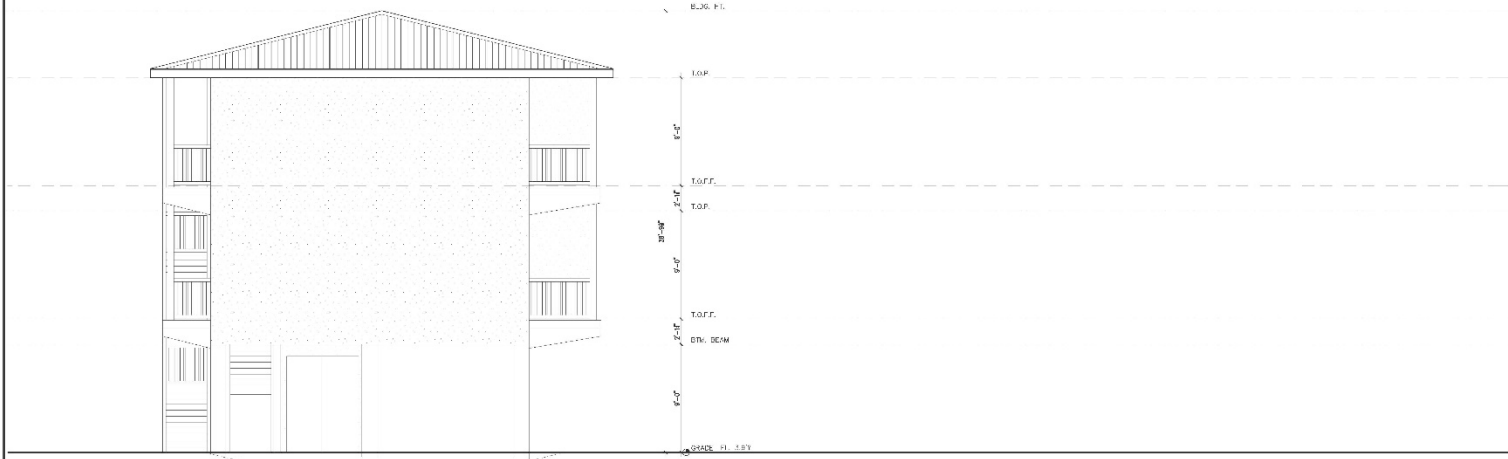


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JAN. 7, 2019

SHEET 6 of 7
SHEET #
A-5



REAR ELEVATION - BUILDING B
 S.E. 1/4" = 1'-0"



RIGHT SIDE ELEVATION - BUILDING B
 S.E. 1/4" = 1'-0"

CONSTRUCTION PROPOSED FOR
 THE FOLLOWING LOCATION:
 58162 OVERSEAS HIGHWAY
 MARATHON, FL

CAMPBELL ENGINEERING
 CONSULTANTS LLC
 William R. Campbell, P.E. License #: 79289
 Email: will@cecank.com
 Phone #: 305-735-4626

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 DATED



PROJECT #:
823
 Date:
JAN. 7, 2019

SHEET 7 of 7
 SHEET #
A-6

CONSTRUCTION PROPOSED FOR THE FOLLOWING LOCATION: 58162 OVERSEAS HIGHWAY MARATHON, FL
 PROJECT # 823
 DATE JAN. 7, 2019
 SHEET 7 OF 7
 SHEET # A-6



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: April 15, 2019

To: Planning Commission

From: George Garrett, Deputy City Manager / Planning Director

Agenda Item: **Ordinance 2019-XX** Amending The Official Zoning Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain's Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

APPLICANT/OWNER: John Timinsky

AGENT: John Wolfe & Barbara Mitchell

LOCATION: The subject property is located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000.

Location Map



REQUEST: Amend the Zoning Map for the subject properties from Residential Low (RL) to Residential Medium (RM). See Exhibits 1 & 2 below.

LOT AREA: The aggregated size of the parcel(s) is approximately 114,998 sq. ft.; 2.64 acres

BACKGROUND:

The current residential FLUM (Residential Low (RL)) and Zoning (Residential Low (RL)) prohibit the use of this parcel for residential uses. If all five parcels were unified through the Unity of Title process, one unit could be built. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential structures. The total area proposed for FLUM / Zoning change is approximately 114,998 square feet. Currently, the site is vacant.

Table 1. Old vs. New Zoning & FLUM

	Pre 2005	Pre 2007	2005	2007
	OLD FLUM	OLD ZONING	CURRENT FLUM	CURRENT ZONING
Timinsky Parcels	Residential Low	Suburban Residential	Residential Low	Residential Low

Current and Proposed Future Land Uses and Zoning

Future Land Use Map Designation

Current: Residential Low (RL)
Proposed: Residential Medium (RM)

Land Use (Zoning) District Designation

Existing: Residential Low (RL)
Proposed: Residential Medium (RM)

Use of Properties

Existing: Vacant
Proposed: Vacant

The properties subject to the Zoning amendment are located on U.S. 1 nearest mile marker 57.5 and consists of a total of 5 parcels. The property is situated in an area with Mixed Use, Residential and Conservation land uses. Adjacent land uses include residential homes to the east and west, a commercial building to the west, the ocean to the south, and conservation and residential uses to the north.

The following table correlates existing uses with the existing FLUM and Zoning map:

Table 2. Existing Conditions

	<u><i>Existing FLUM</i></u>	<u><i>Existing Zoning</i></u>	<u><i>Existing Uses</i></u>
North	Conservation	Residential Conservation (R-C) Conservation Native Area (C-NA)	Lake Edna
East	Residential Low; Residential Medium; Mixed Use Commercial	Public; Residential High (RH)	Residences, Hotels
South	NA	NA	Ocean
West	Mixed Use Commercial; Residential Low	Mixed Use, Residential Low	Residences, commercial building

Existing Habitat

The existing conditions maps shows the parcel contained predominately invasive exotics. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. The applicant applied for and obtained an invasive exotic removal permit to remove the Australian pines on site. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation species that are reemerging at a rapid growing pace. Documented wetlands were identified as disturbed saltmarsh habitat in the low elevation and narrow shoreline beach transitional zone or ecotone of the parcels. The property is recognized habitat to a number of state or federally listed animals. Notably the shoreline has been established as turtle nesting habitat.

FEMA

The property is located within multiple flood zones that range from AE 8 to AE 10 and VE 11 to VE 13 Flood zones, pursuant to the FIRM map, effective date February 18, 2005. The property also lies within Cat1 through Cat3 SLOSH boundaries.

Zoning and Land Use History

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of Low to medium density residential uses.

ANALYSIS OF ZONE CHANGE REQUEST:

Section 102.64 of the Land Development Regulations requires that the following standards and criteria be considered in any rezoning application. Each criteria and explanation of relevance to this application are listed below:

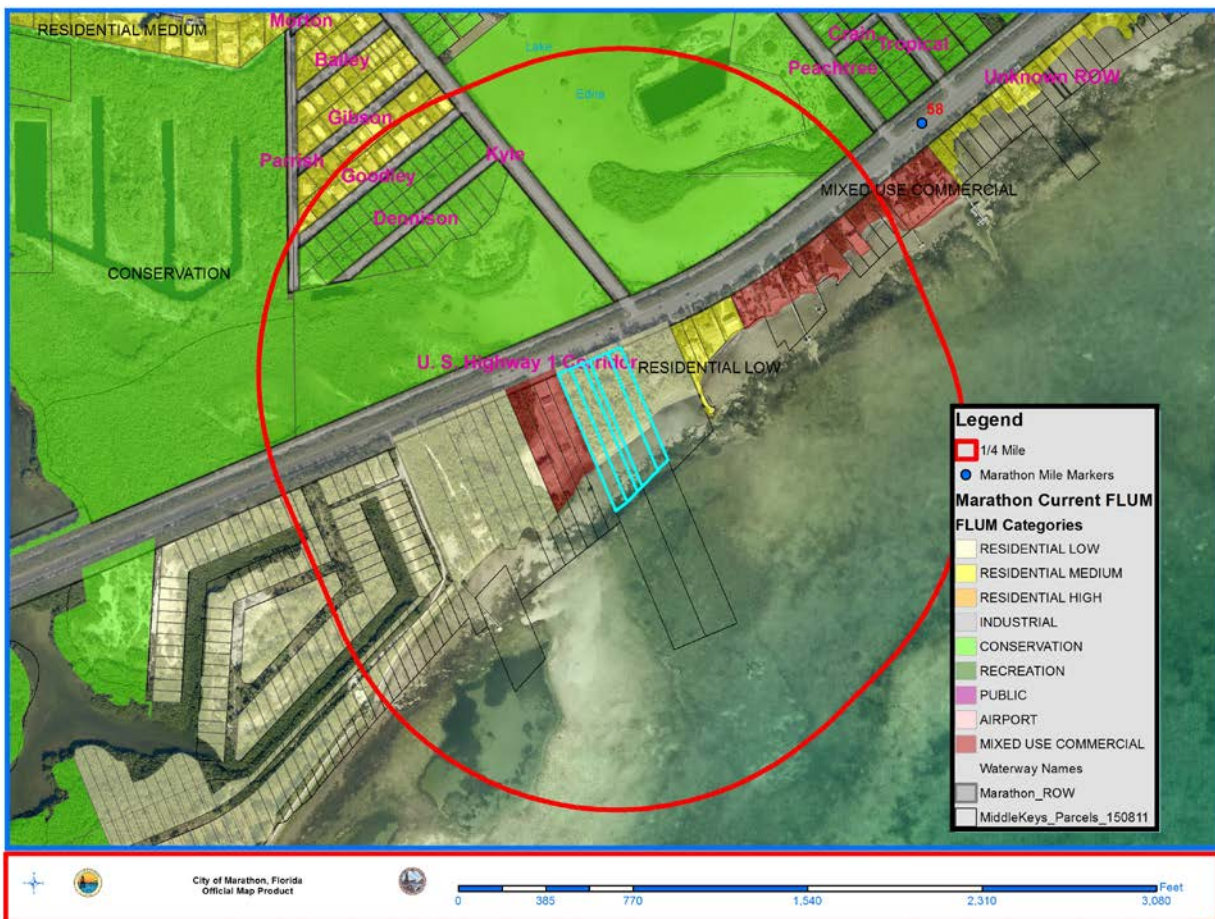
A. **Consistency:** The proposed rezoning is consistent with the Comprehensive Plan and the LDRs.

The proposed zoning change is consistent with the existing FLUM designation and the Comprehensive Plan Goals, Objectives and Policies

It is staff's finding that the request is *in compliance* with this review criterion.

B. **Compatibility:**

In accordance with neighborhood planning practices, a ¼ mile buffer was applied to the property in order to analyze compatibility with surrounding Future Land Uses and Zoning.



Predominately the FLUM designation for this area is Mixed Use along US1 Ocean Side, and Conservation US1 Gulfside. If the proposed zoning change were approved, Residential zoning categories would change from Residential Low to Residential Medium.

While it is clear that the cumulative changes to land use/ zoning proportions are minimal, the location of the proposed change along the larger MU boundary with RM in the neighborhood has the

potential for creating less compatibility issues. These issues are best addressed on a site specific basis as development proposals are presented.

The proposed change to Residential Medium (RM) would make the zoning consistent with similar zoning abutting US1. It is suggested that staff consider looking into FLUM and Zoning changes for the remaining single family parcel currently zoned residential low, as the use is nonconforming to density, and this would create further consistency.

The applicant provided analysis of 112 parcels located along US1 Oceanside. Of these 61 were zoned RM. Of the RM 67% were developed, 12% vacant, and 21% are unbuildable based upon size and habitat. There are 15 RL parcels, 6 of which are developed, and 9 remain vacant. Five of the nine are part of this Zoning and FLUM change request. The remaining 4 are largely environmentally sensitive and have upland acreage of .1, .3, .25, and 1.0.

The proposed rezoning is compatible with the present zoning pattern and conforming uses of nearby property and the character of the surrounding area. Therefore, it is staff's finding that the request is *in compliance* with this criterion.

C. **Development Patterns:** The proposed rezoning shall result in logical and orderly development patterns.

As stated in B, above, the rezoning of the lots to Residential Medium (RM) would make the zoning consistent with the adjacent zonings along US1. The properties are currently vacant, and any redevelopment would have to comply with all regulations as set forth in the Comprehensive Plan, Land Development Regulations and Florida Building Code.

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

D. **Suitability:** The affected property is suitable for the uses that are permitted by the proposed zoning districts.

Many of the parcels are residential, and primarily within the single family market rate category. Any future redevelopment would have to be compliant with the permitted uses within the RM zoning district, of which single family residences are permitted as of right, pending allocations.

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

E. **Adequate Public Services:** The proposed rezoning is consistent with the adequate public facilities requirements of the Plan.

Adequate supply of public services is present to accommodate the proposed rezoning. Wastewater, potable water, solid waste, and stormwater measures can be easily completed to accommodate new development.

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

F. **Access:** Available ingress and egress is adequate for potential uses in the proposed zoning district.

Currently the parcels are vacant, and there is no direct access points onto US1. A traffic study was completed and shows that US1 has the carrying capacity for the increased units. Access permits will be required with Florida Department of Transportation.

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

G. **Public Health, Safety, and Welfare:** The uses allowed within the proposed zoning district shall not adversely affect health, safety, and welfare.

Any new development will be required to meet current regulations regarding landscaping, buffers, setbacks, stormwater management and other LDRs. The proposed redevelopment associated with the overall project should have a positive impact on the area and surrounding properties.

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

Section 102.66. – Residential Density Restriction.

In compliance with density standards adopted and approved by DEO, it should be noted, that RL requires 2two acres for affordable housing, as well as two acres for market rate housing. Therefore the change amounts to a maximum difference in twenty five affordable units, and if market rate, an increase in thirteen units.

SUMMARY:

The applicant has requested a change in the Zoning Map designation for properties located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5. Currently the properties are designated as Residential Low (RL). The applicant is requesting a change to Residential Medium (RM), which will make the zoning consistent with the development along US1.

Staff finds the proposed rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of theses statutes and rules.

RECOMMENDATION:

Based on the above information staff recommends that Planning Commission provide a recommendation for approval to the City Council, supporting a zoning change from RL to RM.

EXHIBIT 1

EXISTING & PROPOSED ZONING MAPS

Existing ZONING



Proposed ZONING



PLANNING COMMISSION AGENDA STATEMENT



Meeting Date: April 15, 2019
To: Planning Commission
From: George Garrett, Planning Director

Agenda Item: An Ordinance Of The City Of Marathon, Florida Amending The Future Land Use Map From Residential Low (RL) To Residential Medium (RM) For The Property Described As Lots 5 Through 9, Block 58, Crain’s Subdivision, Marathon, Monroe County, Florida, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

APPLICANT/OWNER: John Timinsky

AGENT: John Wolfe & Barbara Mitchell

LOCATION: The subject property is located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5, Having Real Estate Numbers 00374600-000000, 00374610-000000, 00374620-000000, 00374630-000000, 00374640-000000.

Location Map



REQUEST: Amend the FLUM Map for the subject properties from Residential Low (RL) to Residential Medium (RM). See Exhibits 1 & 2 below.

LOT AREA: The aggregated size of the parcel(s) is approximately 114,998 sq. ft.; 2.64acres

BACKGROUND:

The current residential FLUM (Residential Low (RL)) and Zoning (Residential Low (RL)) prohibit the use of this parcel for residential uses. If all five parcels were unified through the Unity of Title process, one unit could be built. Therefore, this FLUM amendment is being sought in order to allow for the development of future residential structures. The total area proposed for FLUM / Zoning change is approximately 114,998 square feet. Currently, the site is vacant.

Current and Proposed Future Land Uses and Zoning

Future Land Use Map Designation

Current: Residential Low (RL)
Proposed: Residential Medium (RM)

Land Use (Zoning) District Designation

Existing: Residential Low (RL)
Proposed: Residential Medium (RM)

Use of Properties

Existing: Vacant
Proposed: Vacant

Surrounding FLUM, Zoning and Uses

The properties subject to the Zoning amendment are located between 57478 Overseas Highway and 152E Overseas Highway, and consists of five parcels. The property is situated in an area with Mixed Use, Residential and Conservation land uses. Adjacent land uses include residential homes to the east and west, a commercial building to the west, the ocean to the south, and conservation and residential uses to the north.

The following table correlates existing uses with the existing FLUM and Zoning map:

Table 1. Existing Conditions

	<u><i>Existing FLUM</i></u>	<u><i>Existing Zoning</i></u>	<u><i>Existing Uses</i></u>
North	Conservation	Residential Conservation (R-C) Conservation Native Area (C-NA)	Lake Edna
East	Residential Low; Residential Medium; Mixed Use Commercial	Public; Residential High (RH)	Residences, Hotels
South	NA	NA	Ocean
West	Mixed Use Commercial; Residential Low	Mixed Use, Residential Low	Residences, commercial building

Existing Habitat

The existing conditions maps shows the parcel contained predominately invasive exotics. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. The applicant applied for and obtained an invasive exotic removal permit to remove the Australian pines on site. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation species that are reemerging at a rapid growing pace. Documented wetlands were identified as disturbed saltmarsh habitat in the low elevation and narrow shoreline beach transitional zone or ecotone of the parcels. The property is recognized habitat to a number of state or federally listed animals. Notably the shoreline has been established as turtle nesting habitat.

FEMA

The property is located within multiple flood zones that range from AE 8 to AE 10 and VE 11 to VE 13 Flood zones, pursuant to the FIRM map, effective date February 18, 2005. The property also lies within Cat1 through Cat3 SLOSH boundaries.

FLUM and Land Use History

The City has not made any amendments to the FLUM or zoning map associated with this property since the adoption of the Current FLUM and Zoning Maps in 2005 & 2007 respectively. The property has historically had land use and zoning designations of low to medium density residential uses.

DEVELOPMENT ANALYSIS:

Current Zoning: Residential Low (RL)

Section 103.12 (F). Residential Low

Section 103.12 (F) of the Land Development Regulations states, “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)”.

Residential Low (RL) Allowable Density

Market Rate – .5 units per acre

Affordable – .5 units per acre

Proposed Zoning: Residential Medium (RM)

Section 103.12 (C). Residential Medium Districts

Section 103.12 (C) of the Land Development Regulations states, “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)”.

Residential Medium (RR) Allowable Density

Market Rate – 5 Units per acre

Affordable – 10 units per acre

ANALYSIS OF ZONING CHANGE REQUEST:

Compliance Discussion

Relevant criteria promulgated in Chapter 163, 380, can be itemized in bullets as follows based on the critical concerns more specifically identified in the City’s comprehensive plan:

- Natural Resource Protection
 - Wetlands
 - Estuaries
 - Living marine resources
 - Beaches / Dunes
 - Unique wildlife habitat
 - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
 - Wastewater
 - Stormwater
 - Potable Water
 - Solid Waste
 - Transportation
- Affordable Housing

- Hazard Mitigation
 - CHHA
 - Hurricane Evacuation
- Ports
 - Marina Siting
- Public Use
 - Shoreline use and Access
 - water dependent and independent activity
- Land Acquisition
 - Conservation
 - CHHA
 - Public Services

These bullet items will be utilized as the focus points for review of the proposed zoning amendment and for future comprehensive plan amendments.

Natural Resources

Direct impacts to natural resources would differ minimally as a result of the proposed FLUM change. The area proposed for a FLUM change is vacant and mostly scarified. The wetland areas are transitional along the beach area.. There are no estuaries, grade change limits the beach to a narrow strip without a natural berm. The beach area is classified as potential nesting habitat for sea turtles. No living marine resources adjacent to the subject area will be adversely impacted by the proposed change in the FLUM map. No modifications such as hardened shoreline structures are proposed.

The existing conditions maps shows the parcel contained predominately invasive exotics. Hurricane Irma caused significant damage to the property. High winds caused many large trees to be felled and the storm surge killed many more. The applicant applied for and obtained an invasive exotic removal permit to remove the Australian Pines on site. Therefore, the proposed site of construction is cleared. The parcel remains vacant and contains native wetland vegetation species that are reemerging at a rapid growing pace. Documented wetlands were identified as disturbed saltmarsh habitat in the low elevation and narrow shoreline beach transitional zone or ecotone of the parcels. The property is recognized habitat to a number of state or federally listed animals. Notably the shoreline has been established as potential turtle nesting habitat.

The proposed FLUM amendment is consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Historical and Cultural Resources

Protection of historical and cultural resources is crucial under the City’s Comprehensive Plan, Chapters 163 and 380 F.S.

There are no known historical or cultural resources associated with the subject properties or within the area of the requested FLUM change. Therefore, the FLUM change would have no impacts on historical or cultural resources. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Infrastructure

• Wastewater infrastructure

Wastewater as an issue of infrastructure capacity and means of water quality protection represents the backbone to the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The subject property inclusive of the area of the proposed FLUM change is served by the Area 5 sewer infrastructure. The Utility Manager for the City of Marathon reviewed the proposed FLUM changes and determined that there would be no adverse impact on sewer capacity if the proposal were approved.

The proposed FLUM change would maintain concurrency levels of wastewater infrastructure capacity and provide limited or no adverse impact resulting from nutrient loading. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

• Stormwater infrastructure

Stormwater infrastructure capacity and means of water quality protection represents another of the backbone elements of the City's Comprehensive Plan, the tenants of Chapters 163 and 380 F.S. The City of Marathon requires that all property owners retain their stormwater on site. All proposals for new developments, and redevelopments, must submit detailed civil engineering plans for review by the City Engineer. Proposals for redevelopment would have to obtain all required permits through other applicable agencies, such as the Department of Environmental Protection & South Florida Water Management District.

An approved Stormwater plan exists for this property concurrent with the construction of the single family residence in 2006. No increase in impervious area is proposed. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

• Potable Water

Monroe County's potable water facilities do not critically constrain the amount of future growth that can be accommodated in the County (see End Note 1). The current FKAA Consumptive Use Permit, when compared to current potable water consumption rates, will provide sufficient potable water to accommodate existing and committed development plus an additional 18,258 equivalent residential units (ERU's) in unincorporated and incorporated Monroe County. The FKAA's Consumptive Use Permit has been renewed (see End Note 1). Costs of improvements to upgrade facilities for potable water supply, treatment and distribution, in order to accommodate future growth impacts, would

not be borne by the City, as this utility is private and would be in the FCAA's CIP, not the City's.

An increase in potable water demand is not expected as part of the proposed FLUM change, any increase would have a diminimus impact on potable water infrastructure capacity. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Solid Waste**

Solid waste capacity is managed in the Florida Keys under haul-out contracts to mainland solid waste facilities. There are currently no limits on solid waste capacity that would be impacted by this FLUM proposal.

The proposed FLUM change would maintain concurrency levels of solid waste infrastructure capacity. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

- **Transportation**

The requested FLUM change is not expected to have an adverse impact on roadway capacity.

Monroe County's roadway facilities do not critically constrain the amount of future growth that can be accommodated in the County or the City (see End Note 1). Although localized deficiencies characterize several segments of US 1, sufficient reserve capacity exists in the overall roadway system to accommodate existing and committed development plus an additional 5,738 residential units (see End Note 1). Only 2,550 were allocated to unincorporated Monroe County in 1992, of which 150 went to the City. Thus, there is reserve capacity on US 1 to accommodate planned growth in the City (see End Note 2).

The proposed FLUM change would maintain concurrency levels of transportation on U.S. Highway 1. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Affordable Housing

Affordable housing is an important issue in the Florida Keys and throughout the state of Florida. The City has well over 200 developed or approved affordable housing units. The proposed FLUM change would facilitate a potential for increased affordable housing on site. The proposed FLUM category allows for a potential increase of twenty four (24) units of affordable housing versus the existing FLUM category which currently allows one (1).

The proposed FLUM change will have the effect of enhancing the potential for affordable housing projects. The proposed FLUM amendment is therefore consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Hazard Mitigation

- **Coastal High Hazard Areas**

The entirety of the parcel is not within the Coastal High Hazard Area (CHHA). Any proposed structures must comply with the provisions of the local City of Marathon Floodplain Regulations, in accordance with the standards as set forth in the National Flood Insurance Program (NFIP).

- **Hurricane Evacuation**

The critical carrying capacity constraint at the present time is related to the requirement that hurricane evacuation clearance times for Monroe County be maintained at or below 30 hours through the Year 2002, and further reduced to 24 hours by 2010 (see End Note 1).

The Florida Department of Economic Opportunity in conjunction with sister state agencies and the participation of all local governments completed an analysis this year of current hurricane evacuation constraints. It was determined that under defined conditions, the County was able to maintain a 24 hour evacuation time while continuing the current ROGO and BPAS allocation formulas. Thus, for the ensuing ten (10) years the City will continue to be able to issue 30 residential allocations per year.

The proposed FLUM change would have a positive impact on hurricane evacuation times with the BPAS system in place. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Ports – Marina Siting

Staff believes that the proposed FLUM change will have no adverse impact on ports management or the City’s Marina Siting Plan. Marinas are allowed under a conditional use permit in the Mixed Use (MU) zoning district under the City’s Land Development Regulations; the existing and proposed zoning would not support any Marina development.

The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Public Use – Access to Water

The proposed FLUM amendment is located on the Atlantic Ocean. There is no public access to the water from this location.

Staff believes that the proposed FLUM change will have no adverse impact on public access to water. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

Land Acquisition

Land acquisition in the Florida Keys is carried out by the City, County, State, and to a limited extent the federal government for the purposes of resource conservation and management, removal of properties in the CHHA from public ownership, and to provide for public services and facilities. The subject parcels are not on the Florida Forever boundary map.

The proposed FLUM change would have no impact on land acquisition efforts of the above mentioned entities. The proposed FLUM amendment is, therefore, consistent with these provisions of the Comprehensive Plan and Chapters 16 and 380 F.S.

SUMMARY:

The applicant has requested a change in the Zoning Map designation for the property located between 57478 Overseas Highway and 152E Overseas Highway, nearest Mile Marker 57.5. Currently the property is designated as Residential Low (RL). The applicant is requesting a change to Residential Medium (RM), which will make the zoning consistent with the surrounding use on the nearby properties.

Staff finds the proposed rezoning consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

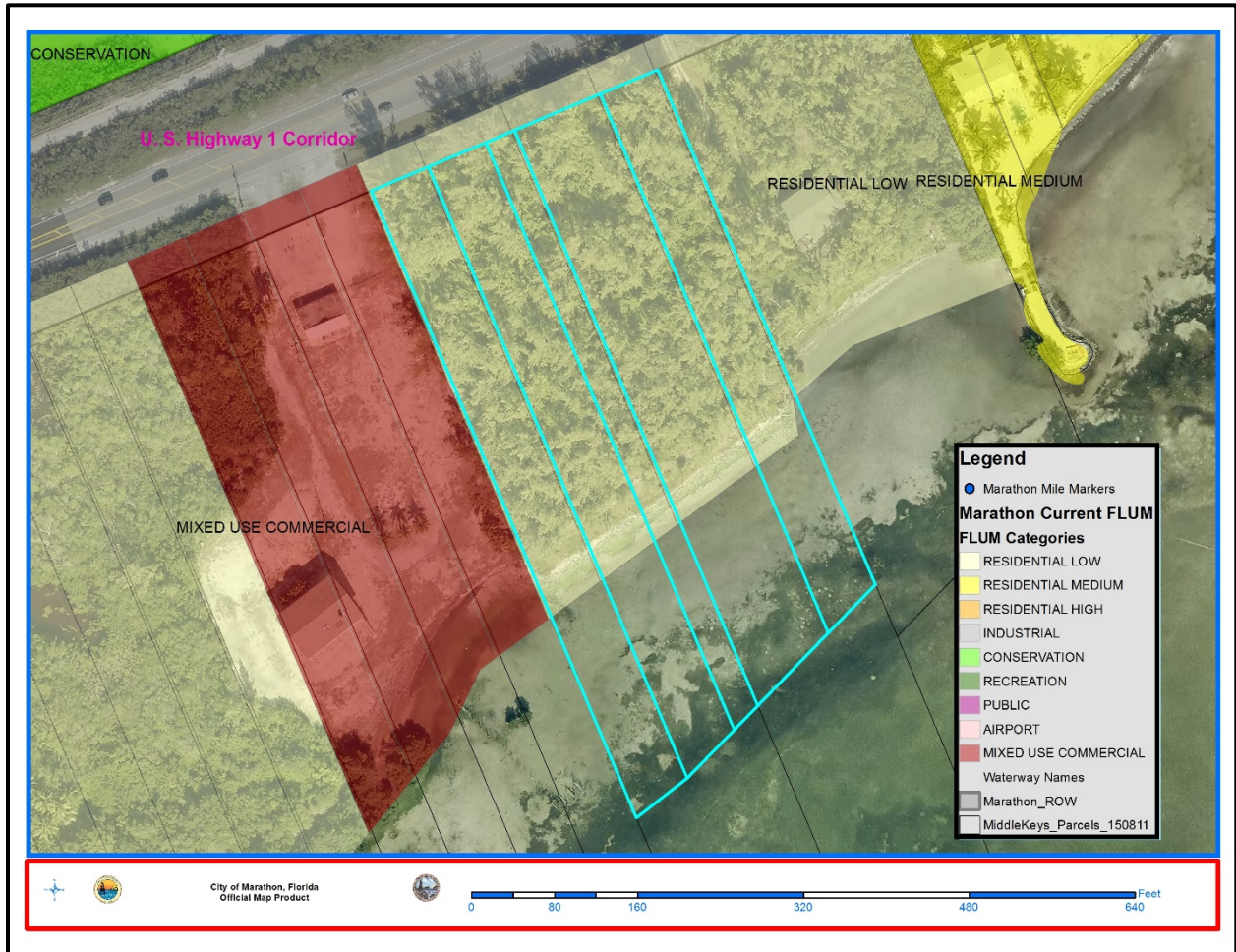
Based on the above information, the Marathon Planning Department staff recommends that the Planning Commission forward a recommendation to Council for transmittal of the request to amend the City of Marathon Official Zoning Map for the subject parcel from Residential Low (RL) to Residential Medium (RM).

End Notes:

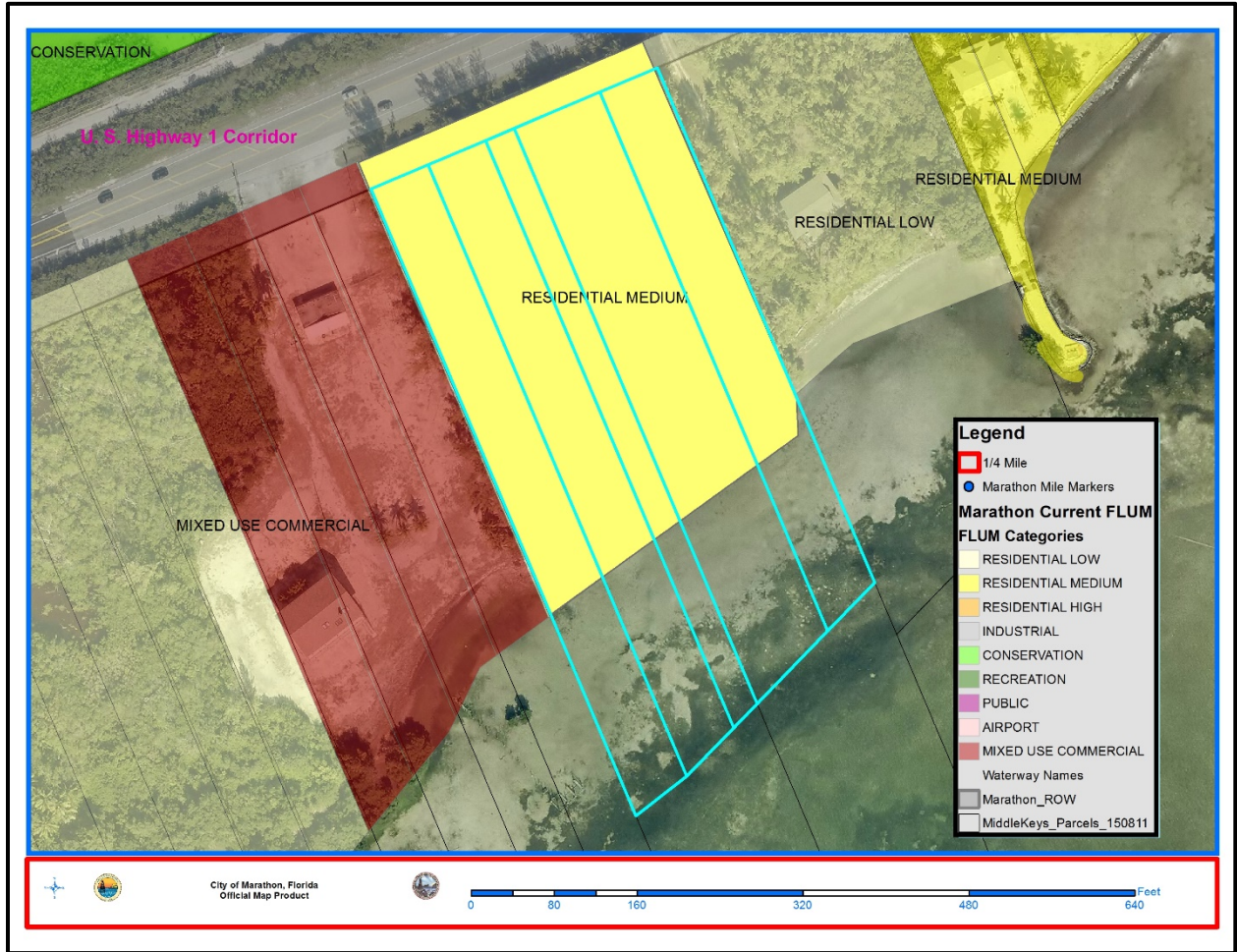
1. The source of the future land use analysis based on carrying capacity limitations can be found in the Monroe County Comprehensive Plan Technical Document (Data and Analysis) Section 2.4 (pp2-86 – 2-95).
2. City of Marathon, Comprehensive Plan Data and Analysis, page 10.

**EXHIBIT 1
EXISTING & PROPOSED ZONING MAPS**

Existing Future Land Use Map (FLUM)



Proposed Future Land Use Map (FLUM)



Proposed Future Land Use Map (FLUM)

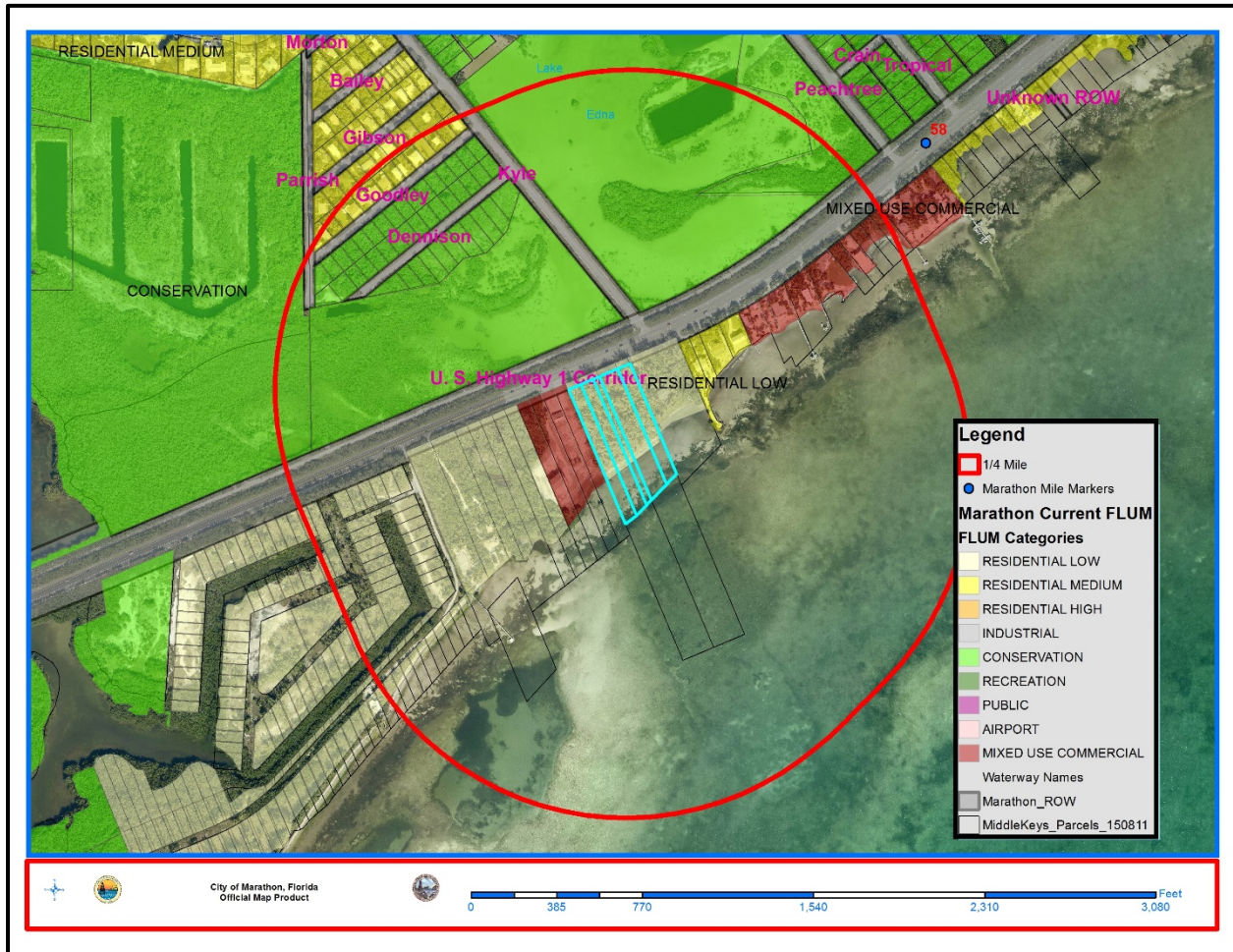


EXHIBIT 2 EXISTING & PROPOSED ZONING MAPS

Existing ZONING



Proposed ZONING



Proposed ZONING

