



City of Marathon Planning Commission
Monday May 17, 2021
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 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 By Circle K Stores, Inc. For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits” For The Development Of A 5,200 Sq. Ft. Convenience Store With 14 Self-Service Fuel Positions On Property Located At 11100 & 11150 Overseas Highway, Which Is Legally Described As The South 150 Feet Of Lots 1 And 2 In Block 1 And The South 208.85 Feet Of Lots 3 And 4 Block 1 Of Key Colony Subdivision No. 3, Key Vaca, Marathon, Monroe County, Florida; Having Real Estate Numbers 00334560-000000 & 00334600-000000.

Item 2. Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, For The Expansion Of The Previously Approved Sea Life Amusement Park And A Marine Educational Facility, To

Include A 15,200 Square Foot Warehouse, Office, And Lab Space, At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.

Item 3. Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Variance Pursuant To Chapter 102 Article 20 From The Provisions Of Section 106.28 Of The City Land Development Regulations (LDRs) Regulating The Minimum Setback For A Principal Structure On Property Located At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.



**City of Marathon Planning Commission
Monday April 19, 2021
9805 Overseas Hwy
City Hall Council Chambers**

MINUTES

Lynn Landry called the meeting of the Planning Commission to order on Monday April 19, 2021 at 5:33 pm.

In attendance: Attorney Steve Williams, Admin Assistant Lorie Mullins, Planning Director Brian Shea, City Manager George Garrett, and members of the public.

The Pledge of Allegiance was recited.

The roll was called. Mike Cinque-present; Matt Sexton-present; Susan Klock-present; Mike Leonard-present; Lynn Landry-present.

Landry asked for approval of the last meeting minutes.

Leonard moved to approve. Sexton seconded. The roll was called. The minutes were approved 5-0.

Item 1 was read into the record. Consideration Of A Request For A Development Agreement, For Island Homes Of The Keys Inc, Pursuant To Chapter 102, Article 8 Of The City Of Marathon Land Development Regulations ("The Code") Entitled "Development Agreement" For The Development Of A Single Family Home; Vacant Land; Which Is Legally Described As, Section 32, Township 65, Range 33, Government Lot 1 And Section 05, Township 66, Range 33, Part Of Government Lot 4, Formerly Known As Phase V (The Island) Seawatch At Marathon A Condominium, Marathon, Monroe County, Florida; Having Real Estate Number 00104135-000000, Nearest Mile Marker 53.

Bart Smith presented the item on behalf of the applicant.

Shea presented the item. Klock wanted to know the impacts this will have on the environment. Shea stated that the environmental study would have to be updated, clustering requirements will have to be met, and the access drive will need to be reduced to 12'.

Public Speakers:

- Norman Webner asked for clarification on the transfer of a building right.
- George Connitt, for the Seawatch Condo Association, stated he is in favor of the development if there is no further development, in perpetuity.

Landry asked if anyone has had ex-parte communications, there were none.

Klock moved to approve. Leonard seconded. The roll was called. The motion was approved 5-0.

Cinque recused himself from Item 2.

Item 2 was read into the record. An Ordinance Of The City Of Marathon, Florida; Amending Section 104.62, “Mobile Vendor Food Units”; Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; Providing For Transmittal To The State Department Of Economic Opportunity; Providing For Inclusion In The Code; And Providing For An Effective Date.

Shea presented the item. After a brief discussion Shea clarified that the Ordinance is required to be in compliance with the state, as this removes the city’s ability to regulate the number of licenses issued.

Landry moved to approve. Klock seconded. The roll was called. The motion was approved 4-0.

Item 3 was pulled from the agenda until next month.

Consideration Of A Request A Conditional Use Permit And A Development Agreement, For Insite Marathon Key LLC, Pursuant To Chapter 102, Articles 8 And 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement” And “Conditional Use Permits” Respectively For The Redevelopment And Expansion Of An Existing Hotel; Located At 4590 Overseas Highway; Which Is Legally Described As Part Of Government Lot 2 And Adjacent Bay Bottom And Adjacent Part Of Us1 State Road 5 And Bay Bottom Adjacent To Government Lot 2, Section 10, Township 66, Range 32, Key Vaccas, Marathon, Monroe County, Florida; Having Real Estate Numbers 00103150-000000, Nearest Mile Marker 50.

Item 4 was read into the record.

An Ordinance Of The City Of Marathon, Florida; Amending Chapter 107 Article 1 Entitled Building Permit Allocation System (BPAS); Providing Criteria For Transient Unit Conversion Of Market Rate Dwelling Units And To Establish Limitations; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; And Providing For Inclusion In The Code; And Providing For An Effective Date.

Shea presented the item.

Cinque asked who proposed. Marlin Bay is the applicant. Cinque wanted to make clear that the City did not bring this item forward.

Bart Smith spoke on the item, giving a brief history of allocations coming from the State, noting that Marlin Bay is using part of their units as transient units even though they are market rate units.

After a brief discussion and comments from all commissioners, Smith requested to remove the item and postpone indefinitely.

All commissioners agreed.

Items 5, 6, 7 and 8 were read into the record.

An Ordinance Of The City Of Marathon, Florida Amending The Future Land Use Map (FLUM) From Conservation (C) To Mixed Use-Commercial (Mu-C) For The Property Described As Block 1 Lots 4-19, Block 2 Lots 11-15, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000,

00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, And 00358610-000000; 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 6

An Ordinance Of The City Of Marathon, Florida Amending The Zoning Designation From Conservation Native Area (C-Na) To Mixed Use (Mu) For The Property Described As Block 1 Lots 4-19, Block 2 Lots 11-15, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, And 00358610-000000; 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 7

Consideration Of A Request For An Annulment Of A Plat, For Floridian Holdings, LLC, Pursuant To Chapter 102, Article 10 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Subdivision Of Land/Plats And Replats” For The Abandonment Of A Portion Of Ecstasy Subdivision West Of Banana Boulevard Excluding Block 3 Lot 4 And Adjacent Waterway And Part Of Vacated Ocean Drive, And The Abandonment Of The Amended Valhalla Island Plat; Located At And Around 56243 Ocean Drive; Which Is Legally Described As Block 1 Lots 1-22, Block 2 Lots 1-20, Lot A, And Waterway Number 1, Block 3 Lots 1-3 And Lots 5-19, Lot A, And Part Of Waterway Number 2, Block 4 Lots 1-4, Block 5 Lots 1-7, Lot A, And Lot B Of Ecstasy Subdivision, As Well As The Entirety Of Valhalla Island Amended Plat Of Ecstasy Subdivision Block A, Bay Bottom Adjacent To Tract A, And Previously Abandoned Right Of Way Of Ocean Drive, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358910-000100, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000,

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00360220-005500, 00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900, And
00358670-000000, Nearest Mile Marker 57.

Item 8 was read into the record.

Consideration Of A Request A Conditional Use Permit And A Development Agreement, For Floridian Holdings, LLC, Pursuant To Chapter 102, Articles 8 And 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Development Agreement” And “Conditional Use Permits” Respectively For The Development Of A Hotel; Located At And Around 56243 Ocean Drive; Which Is Legally Described As Block 1 Lots 1-22, Block 2 Lots 1-20, Lot A, And Waterway Number 1, Block 3 Lots 1-3 And Lots 5-19, Lot A, And Part Of Waterway Number 2, Block 4 Lots 1-4, Block 5 Lots 1-7, Lot A, And Lot B Of Ecstasy Subdivision, As Well As The Entirety Of Valhalla Island Amended Plat Of Ecstasy Subdivision Block A, Bay Bottom Adjacent To Tract A, And Previously Abandoned Right Of Way Of Ocean Drive, Section 35, Township 65, Range 33, Crawl Key, Marathon, Monroe County, Florida; Having Real Estate Numbers 00099750-000000, 00099760-000000, 00099760-000100, 00099760-000200, 00099760-000300, 00099760-000400, 00099760-000500, 00358250-000000, 00358260-000000, 00358270-000000, 00358280-000000, 00358290-000000, 00358300-000000, 00358310-000000, 00358320-000000, 00358330-000000, 00358340-000000, 00358350-000000, 00358360-000000, 00358370-000000, 00358380-000000, 00358390-000000, 00358400-000000, 00358410-000000, 00358420-000000, 00358430-000000, 00358440-000000, 00358450-000000, 00358460-000000, 00358470-000000, 00358480-000000, 00358490-000000, 00358500-000000, 00358510-000000, 00358520-000000, 00358530-000000, 00358540-000000, 00358550-000000, 00358560-000000, 00358570-000000, 00358580-000000, 00358590-000000, 00358600-000000, 00358610-000000, 00358620-000000, 00358630-000000, 00358640-000000, 00358650-000000, 00358660-000000, 00358661-000000, 00358710-000000, 00358720-000000, 00358730-000000, 00358740-000000, 00358750-000000, 00358760-000000, 00358770-000000, 00358780-000000, 00358790-000000, 00358800-000000, 00358810-000000, 00358820-000000, 00358830-000000, 00358840-000000, 00358850-000000, 00358851-000000, 00358860-000000, 00358870-000000, 00358880-000000, 00358890-000000, 00358900-000000, 00358910-000000, 00358910-000100, 00358930-000000, 00358940-000000, 00358950-000000, 00358960-000000, 00358970-000000, 00358980-000000, 00358990-000000, 00358990-000200, 00359000-000000, 00359601-000000, 00359602-000000, 00359602-000100, 00360220-000200, 00360220-000400, 00360220-000500, 00360220-000700, 00360220-000800, 00360220-000900, 00360220-001000, 00360220-001100, 00360220-001200, 00360220-004400, 00360220-004500, 00360220-004600, 00360220-004700, 00360220-004800, 00360220-004900, 00360220-005000, 00360220-005200, 00360220-005300, 00360220-005400, 00360220-005500, 00360220-005600, 00360220-005700, 00360220-005800, 00360220-005900, And 00358670-000000, Nearest Mile Marker 57.

Shea presented the item.

Cinque started the discussion with density/intensity questions. Shea explained that it would be the City’s first overlay, not an actual zoning change, which is not going to increase intensity. Sexton and

Leonard agreed with Cinque that there would be future problems if this is to set the precedence, changing conservation zoning to mixed use.

Bart Smith explained that the property is disturbed wetlands which will not increase the intensity and there will be a site-specific policy.

Sexton asked if the project could continue forward without the zoning change. Smith said that the entire project would have to be redesigned.

Nicole Emmons, Principal for Hart Howerton, the architect for the project, joined remotely and presented the proposed project with the use of visual aids.

Klock asked if this project could move forward without the zoning overlay. Smith stated that they need to utilize that area and therefore they are requesting the zoning change. Emmons stated that using that area will result in more open space and a more viable resort.

Klock clarified her question: Can this project go forward without a zoning change. Smith stated the plan would have to be started again from the beginning, anything is possible, but the area in question is disturbed and meets all criteria for the zoning change.

Landry opened the meeting to public speakers.

Cheryl Wilcox, lives in the only house on Valhalla. She asks that all her rights as a property owner are protected, otherwise, she is not opposed to the development in principle.

Cinque moved to deny the item. Sexton seconded.

The vote to deny Item 6, Zoning amendment, was approved 4-1. Landry dissenting.

Cinque moved to deny the item. Leonard seconded.

The vote to deny Item 5, FLUM amendment, was approved 4-1. Landry dissenting.

Cinque moved to deny the item. Leonard seconded.

The vote to deny Item 7, annulment of plat, was approved 4-1. Landry dissenting.

Cinque moved to deny the item. There were no ex-parte communications. Klock seconded.

The vote to deny Item 8, Conditional Use and Development Agreement, was approved 4-1. Landry dissenting.

Motion to adjourn.

Landry adjourned the meeting at 7:15 p.m.

ATTEST:

Lynn Landry – Planning Commission Chairman

ATTEST:

Lorie Mullins-Administrative Assistant
City of Marathon Planning Department

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: May 17, 2021
To: Planning Commission
From: Brian Shea, Planning Director

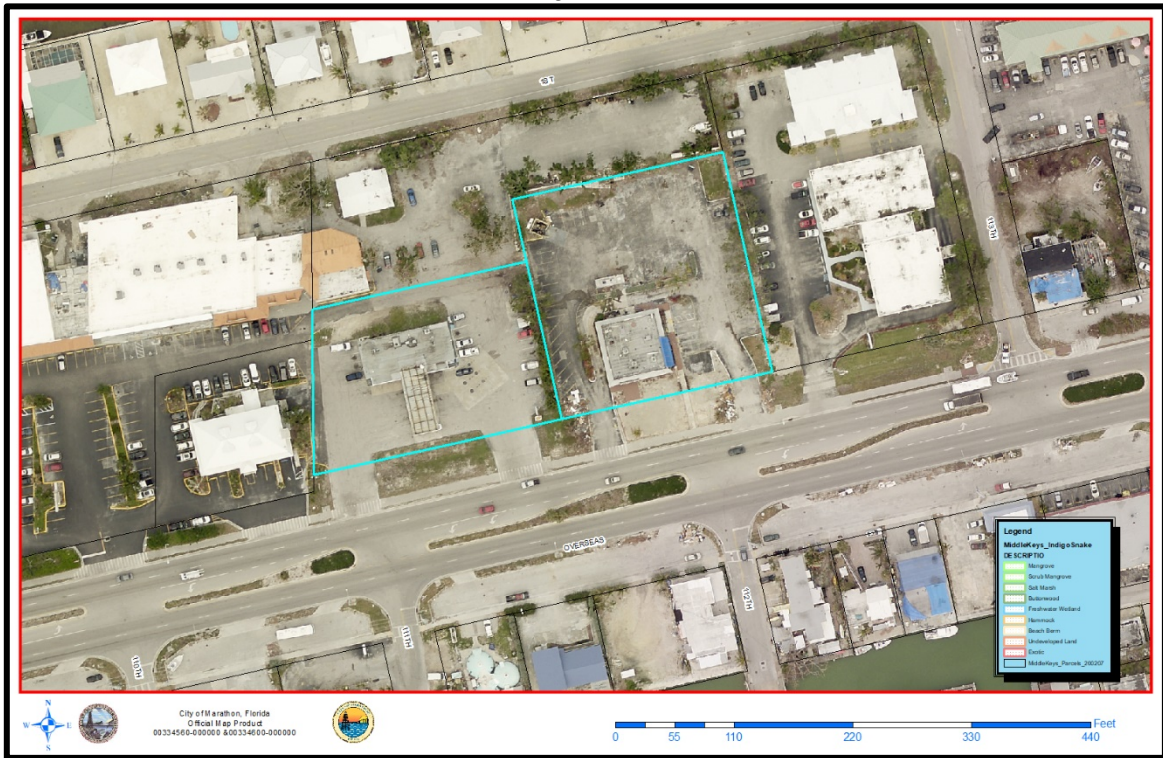
Agenda Item: Consideration Of A Request By Circle K Stores, Inc. For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Conditional Use Permits" For The Development Of A 5,200 Sq. Ft. Convenience Store With 14 Self-Service Fuel Positions On Property Located At 11100 & 11150 Overseas Highway, Which Is Legally Described As The South 150 Feet Of Lots 1 And 2 In Block 1 And The South 208.85 Feet Of Lots 3 And 4 Block 1 Of Key Colony Subdivision No. 3, Key Vaca, Marathon, Monroe County, Florida; Having Real Estate Numbers 00334560-000000 & 00334600-000000.

APPLICANT/ OWNER: Circle K Stores Inc

AGENT: Maleia Storum

LOCATION: The project site is located at 11100 & 11150 Overseas Hwy nearest mile marker 53. See Figure 1.

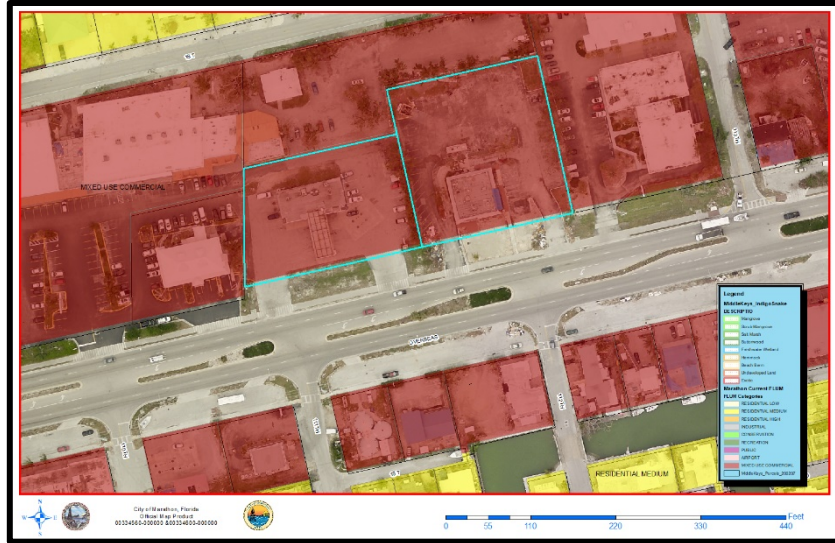
**Figure 1
Project Site**



REQUEST: A Conditional Use Permit for the authorization of development of the subject property having the real estate number 00334560-000000 & 00334600-000000.

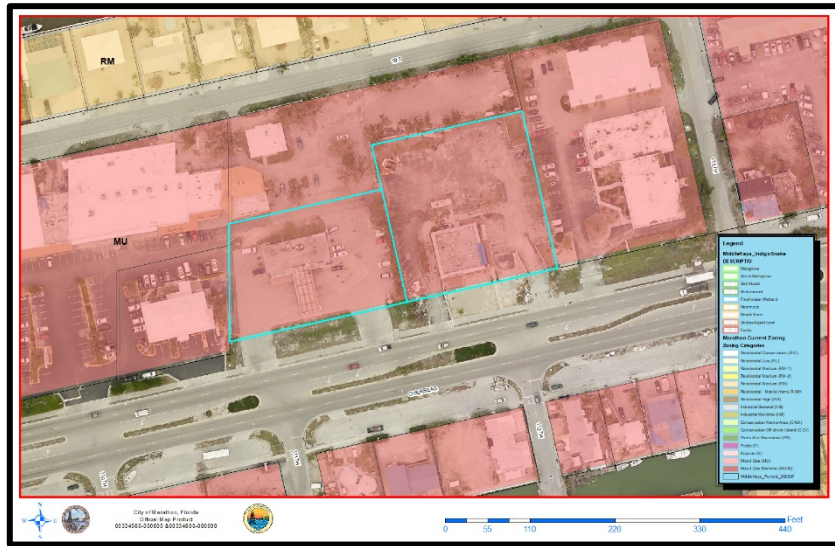
FUTURE LAND USE MAP DESIGNATION:
Mixed Use Commercial (MUC). See Figure 2.

**Figure 2
Future Land Use Map**



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

Figure 3
Zoning Map



LOT SIZE:
Lot 00334560-000000 total acreage 0.75 acres or 32,700 square feet
Lot 00334600-000000 total 0.96 or 41,770 square feet

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	Mixed Use	Marathon Bagel Company, Key's Clipper & Style Shop, Dollar Tree
East	Mixed Use	Centennial Bank and residential units
South	Mixed Use	Swimming Pool Etc., A. Dennis Kulig Contractor, Keys Car Wash, and retail
West	Mixed Use	Coldwell Banker Schmitt Real Estate Co.

EXISTING CONDITIONS:

The project site consists of a developed lot with commercial structures on US1. Existing uses include a Shell gas station and Circle K convenience store.

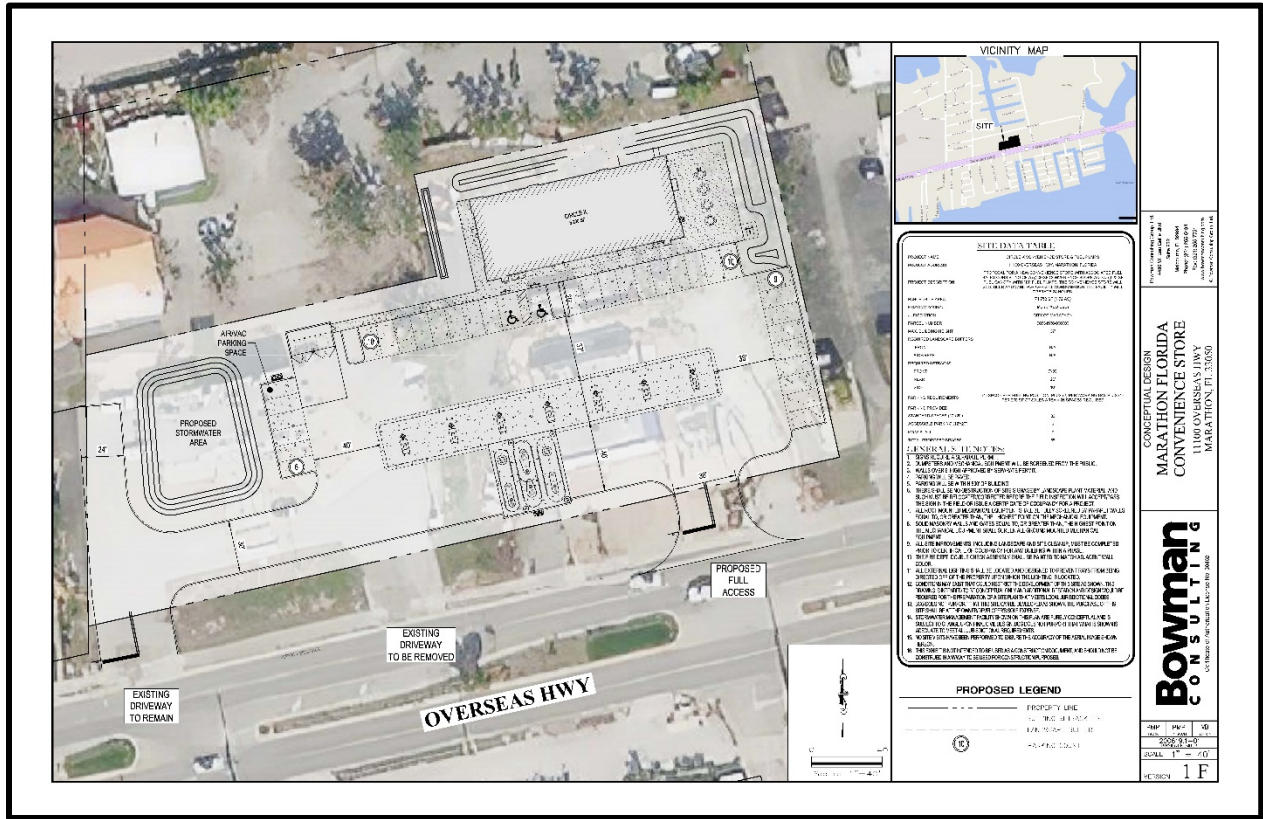
PROPOSED REDEVELOPMENT:

An approximately 5,200 square foot convenience store and gas station.

See Figure 4 for Site Plan layout.

Figure 4

Proposed Redevelopment Site Plan



BACKGROUND:

The proposed project is the redevelopment of the existing gas station and convenience store. This report addresses the Conditional Use application associated with the Conditional Use Permit.

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 Approval are outlined in Chapter 102, Article 13, Conditional Use Permits, in the City of Marathon Land Development Regulations.

CRITERIA

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

The proposed development project is located within the 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 development of existing land 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 a convenience store is permitted as of right, but fuel sales are only approved through the Conditional Use Permit process. 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 103.15.3 in the Land Development Regulations qualifies the allowed range of intensities based on the intensity of retail use.

Development Type	Proposed	Maximum Allowed
Commercial Floor Area		
High Intensity (.25% FAR)	5,200 square feet	18,694 square feet

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 development of an existing mixed-use district into the same conditional use, which is consistent with the Mixed-Use classification.

The existing land use pattern in the project vicinity consists of commercial use and residential uses to the east; commercial uses to the south; commercial uses to the west; and commercial uses directly north.

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

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

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

- All conditions of the Fire Marshal must be met prior to permit issuance.

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 parcel is not identified on the Species Focus List and is previously developed.

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

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

Therefore, it is staff's opinion that the request is ***in compliance*** with the requirements of these sections so long as the development is conditioned on provision of final landscaping and mitigation plans subject to approval of the City Biologist and final stormwater plans subject to City approval.

- A final landscaping plan must be approved prior to permit issuance.
- A final stormwater plan must be submitted prior to permit issuance.

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;

Currently, the parcel has four access driveways, two along Overseas Hwy, which provided access to an existing abandoned Burger King fast-food restaurant, and two driveways along Overseas Hwy, which currently provide access to the existing Shell gas station and Circle-K convenience store. Proposed access to the site would be provided via one Full Access driveway along Overseas

Hwy, one existing, to remain driveway along Overseas Hwy, and from one cross-access driveway which will provide a connection to the adjacent retail.

A traffic study was completed comparing the existing convenience store, and gas station, with the proposed gas station and convenience store. The proposed 444 daily trips would not alter the level of service classification of C for this portion of US1. Based on the results of the capacity analyses, the inclusion of the proposed Circle K gas station at 11100 Overseas Hwy, in Marathon, Florida, is not expected to adversely impact the surrounding roadway network.

Land Use	Weekly AM Peak Hour			Weekly PM Peak Hour		
	In	Out	Total	In	Out	Total
Proposed Gas Station	222	222	444	183	183	336
Existing Gas Station	-71	-71	-142	-86	-87	-173
New Net Trips	+151	+151	+302	+97	+96	+163

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.

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.
- Applicant must overlay the existing street with a minimum 1” structural coarse. This may be done with a standalone right of way permit or may be included in the overall permit for improvements.

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

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

Use	Code Citation	Requirement	Spaces Required	Spaces Provided
Convenience store, with or without fuel sales	107.46.1	1 per fueling position, plus 2 per working bay, plus 1 per 200 sq ft of sales area	40	49

Section 107.48 establishes that development along bike paths must provide bicycle parking. One space is required per ten required parking spaces. The applicant proposes to have a bike rake.

Section 107.52 D requires that one DA compliant space be provided for every 25 required parking spaces. The applicant is proposing two ADA compliant spaces, with a shared access aisle.

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

- Prior to permit issuance the site plan must show 4 bicycle parking spaces.

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

The proposed project consists of redevelopment of an existing gas station and convenience store. Exterior lighting must conform to the letter with the City of Marathon LDR's. 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.

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

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The site plan does indicate the dumpster location and provides details for the screening of the dumpsters and compactors.

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

- Prior to permit issuance the dumpster must be shown on site and must be screened.

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 connected to the City Sewer System. The applicant will provide wastewater and sewage collection and disposal via connecting to City wastewater system. This project should not constitute additional impacts to the City's wastewater system but will be reassessed during permitting.
- **Water**: The Florida Keys Aqueduct Authority will provide potable water for the facility.
- **Solid Waste**: Marathon Garbage Service will provide solid waste disposal.
- **Surface Water**: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards. However, a final stormwater plan will be required for building permit issuance.
- **Recreation and Open Space**: This development will have a de minimis impact on recreation and open space.

- Roadways: The applicant is developing the site with less intensity than was contained within the site; resulting in a de minimis impact.
- Educational Facilities: This development will have a de minimis impact on educational facilities since existing uses are replaced in kind.

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

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

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

Table 107.66.1 establishes project boundary buffer standards applicable to the project. The subject parcel is zoned MU and is bordered to the west and north by properties zoned MU. There is no project boundary buffer required between MU and MU zoning. However, the applicant is proposing vegetative screening between the site and the neighboring sites.

Section 107.71 A. requires that parcels with a MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along US 1. With the relocation of driveways and site redevelopment, the requisite plantings will be provided.

Section 107.71 C. requires that all nonresidential uses shall be required to provide a minimum of two canopy trees for every 100 linear feet of property frontage along local streets. The applicant proposes landscaping compliant with this requirement.

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’.

This plan shows a 40’ setback on the front yard to the canopy, 27.3’ western side and 40’ setback on the eastern side and 21.6’ rear yard setback.

Setback	Required	Required Landscape	Proposed	Compliant
Front	0-30	10’	40’	Y
East Side	0-10	N/A	40’	Y
West Side	0-10	N/A	27.3’	Y
Rear	20	N/A	21.6’	Y

Therefore, 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; however, signs for the project will be reviewed prior to issuance of a building permit according to Chapter 107, Article 7, Signs, particularly for the non-residential portion of the project.

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.

8. Required yards and other open space;

Section 106.16 established required open space for the project. The parcel is generally considered developed; therefore, a twenty percent open space requirement applies. According to the provided conditional use plan, the property shall maintain a 20% open space.

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 is relatively dense and intense. Adjacent uses include commercial and residential establishments. A redevelopment of the site with less intensity 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 42' as measured from the crown of the roadway or unimproved grade. The site plans show that buildings are below 42'.

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 104.14 Convenience Store contains special requirements.

A convenience store may be allowed pursuant to Table 103.15.1, subject to the following standards:

- Additional Principal Uses: A convenience store may offer an additional principal use, such as a restaurant or fuel sales. A convenience store with two (2) or more principal uses shall comply with the standards for all these uses.
- Maximum Gross Floor Area: A convenience store, including additional principle uses, shall not exceed 8,000 square feet of total floor area.
- Parking for Additional Principal Uses: Parking for additional principal uses shall be calculated separately to determine the total number of required parking spaces.

Additionally, Section 104.18 Fuel Sales contains the following special requirements.

Fuel sales may be allowed pursuant to Table 103.15.1 provided that the locations of fuel pump islands and fuel storage tanks meet the standards in this section. Other structures on the premises shall follow the standards for the zoning district. Within the I-M and MU-M districts, fuel sales shall be limited to vessels and other water vehicles.

- Location of Fuel Pump Islands: Pump islands shall be a minimum of 25 feet from any road right-of-way line, ten (10) feet from any other property line or 12 feet from any building line. Canopies over the pump islands may extend up to ten (10) feet from any property line.
- Location of Fuel Tanks: Gasoline and fuel storage tanks shall be located a minimum of 20 feet from any property line or building.

Therefore, the request is ***not in compliance*** with the requirements of this section, however with the conditions noted above can be made compliance with permit issues.

CONCLUSION:

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

The proposed development consists of the 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 conditional approval of the commercial redevelopment of 11100 Overseas Highway to the Planning Commission. The proposed conditions of approval are listed below.

Conditions of Approval

1. All conditions of the Fire Marshal must be met prior to permit issuance.
2. A final landscaping plan must be approved prior to permit issuance.
3. A final stormwater plan must be submitted prior to permit issuance.
4. Clear sight triangles must be shown on the site plan at time of building permit issuance.
5. Applicant must overlay the existing street with a minimum 1” structural coarse. This may be done with a standalone right of way permit or may be included in the overall permit for improvements.
6. Prior to permit issuance the site plan must show 4 bicycle parking spaces.

7. A detailed lighting plan must be submitted before the project is permitted.
8. Prior to permit issuance the dumpster must be shown on site and must be screened.
9. City approval is required for the stormwater management system prior to Building Permit Approval.
10. City approval of the connection to the City Wastewater Utility will be required.
11. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
12. Additional Principal Uses: A convenience store may offer an additional principal use, such as a restaurant or fuel sales. A convenience store with two (2) or more principal uses shall comply with the standards for all these uses.
13. Maximum Gross Floor Area: A convenience store, including additional principle uses, shall not exceed 8,000 square feet of total floor area.
14. Parking for Additional Principal Uses: Parking for additional principal uses shall be calculated separately to determine the total number of required parking spaces.
15. Location of Fuel Pump Islands: Pump islands shall be a minimum of 25 feet from any road right-of-way line, ten (10) feet from any other property line or 12 feet from any building line. Canopies over the pump islands may extend up to ten (10) feet from any property line.
16. Location of Fuel Tanks: Gasoline and fuel storage tanks shall be located a minimum of 20 feet from any property line or building.

PLANNING COMMISSION AGENDA STATEMENT



Meeting Date: May 17, 2021

From: Brian Shea, Planning Director

Through: George Garrett, City Manager

Agenda Item: Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Conditional Use Permits”, For The Expansion Of The Previously Approved Sea Life Amusement Park And A Marine Educational Facility, To Include A 15,200 Square Foot Warehouse, Office, And Lab Space, At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.

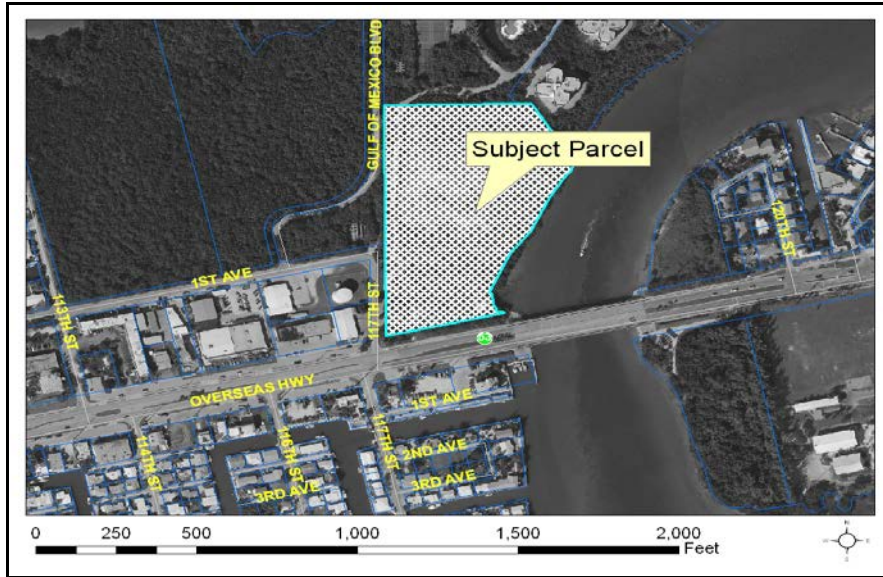
AND

Consideration Of A Request By Florida Keys Animal Encounters, LLC For A Variance Pursuant To Chapter 102 Article 20 From The Provisions Of Section 106.28 Of The City Land Development Regulations (LDRs) Regulating The Minimum Setback For A Principal Structure On Property Located At 11710 Overseas Highway, And Legally Described As Part Of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, Monroe County, Florida, Having Real Estate Number 00104130-000000.

RECOMMENDATION: Planning Department staff recommends conditional approval of this amendment request.

APPLICANT/OWNER: Florida Keys Animal Encounters, LLC

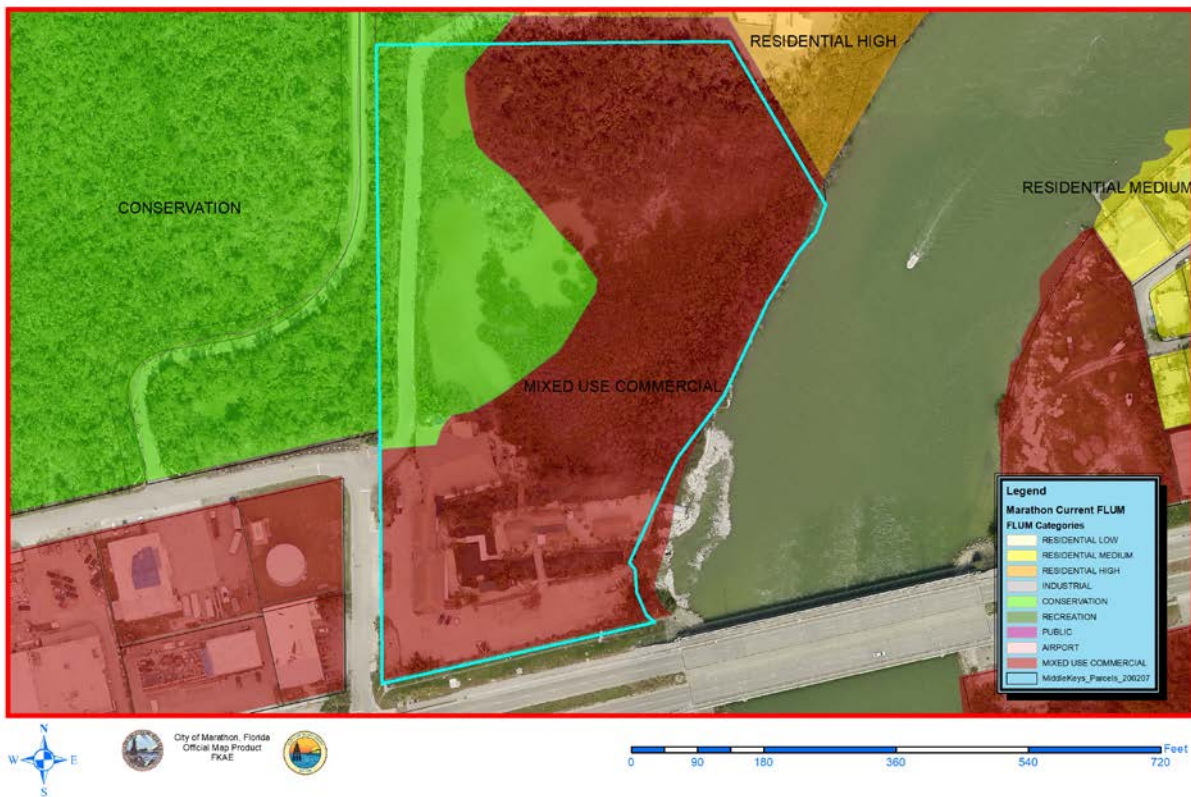
LOCATION: The subject property is located on the northeastern corner of the intersection of Overseas Highway and 117th Street, Gulf, near Mile Marker 53 and is legally described as Part of Government Lot 4, Section 5, Township 66 South, Range 33 East, Key Vaccas, having Real Estate Number 00104130-000000



REQUEST: Amendment to a Conditional Use Variance Approval for the Development of the Florida Keys Animal Encounter Center.

FUTURE LAND USE MAP DESIGNATION:
Mixed Use Commercial and Conservation See Figure 2.

**Figure 2
Future Land Use Map**



ZONING MAP DESIGNATION: Mixed Use (MU) and Native Area (C-NA) See Figure 3.

**Figure 3
Zoning Map**



City of Marathon, Florida
Official Map Product
PKAE



LOT SIZE: 1.7 acres (area proposed for development)
8.99 acres (entire site)

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	Residential High (RH) and Native Area (C-NA)	Vacant land and Seawatch Condominiums
East	n/a	Vaca Cut
South	Mixed Use (MU)	Captain Hook’s, Fish Tails Restaurant, Marathon Lady Charters
West	Mixed Use (MU) and Native Area (C-NA)	Auto Store, State-owned vacant property

EXISTING CONDITIONS:

The project site consists of one parcel that has been previously developed as an amusement and sea life park known as Aquarium Encounters.

PROPOSED REDEVELOPMENT:

Office, laboratory, warehouse: 15,200 sq. ft.

BACKGROUND:

On November 8, 2005, City Council passed Resolution 2005-159 (Exhibit A), approving a Major Conditional Use permit for Florida Keys Animal Encounters, LLC. The Florida Keys Animal Encounter Center will be a marine educational facility that provides visitors the opportunity to learn about marine animals. The project included a 2,800 square foot Animal Encounter Center, a 6,000 square foot office building for the Dynasty Marine corporate office, an encounter tank, and various accessory uses. The original approval also consisted of a total of five (5) affordable/workforce housing units to be located above the two buildings onsite.

The site also includes a “U” shaped canal with an island in the center. The project was approved with new bridges to the island, a number of view platforms through the mangroves and onto the canal, and a new dock into Vaca Cut. The site will also feature walking paths and information kiosks throughout. The remainder of the site, which is primarily a tidal estuary, will be undisturbed and undeveloped.

The applicant went through an amendment to the conditional use approval to allow the following changes in 2010. Resolution 2010-40 approved the following changes:

- The project would no longer include any workforce housing units on site. The applicant built a deed restricted affordable duplex located on 7th Avenue, Gulf that is used to house the employees of the company. There is no Land Development Regulation based requirement for the project to provide workforce housing onsite. Consequently, the approval of this amendment will return the two affordable

housing allocations that were awarded to the project under Resolution 2005-159 back to the City.

- The main 2,800 square foot Animal Encounter Center would be a tiki hut, thatch roof style building.
- The parking area would be permeable, reducing the amount of fill required for the project.
- Other minor changes to the site plan include: the encounter tank would be constructed of fiberglass instead of concrete, the proposed office building would be slightly larger (6030 sq/ft vs. 6000 sq/ft), and the location of the food concession area had been changed.

The applicant is now proposing an amendment to increase the institutional area to 15,200 square feet and locate it within the uplands near the northern end of the property.

VARIANCE EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

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

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

A. *Special Circumstances:*

The Property has a gross area of nine (9) acres or 392,171 Square feet, with approximately 7.69 or 334,887 square feet of upland. The applicant proposes to have a Mixed-Use light industrial use on the property. Pursuant to the Code, the property has an open space requirement of 20% and pursuant to Table 103.15.3, Code Section 103.15, a FAR requirement of thirty percent (30%). Utilizing the above mentioned FAR ratio and the total Mixed-Use site square footage of 289,723.35 SF, the Property has a maximum FAR potential of 86,916.9 SF. The Development contemplates the addition of a 15,200 SF non-residential warehouse, which is well below the FAR permitted on the Property under the Code.

Based on the unusual and unique conditions or circumstances of the Property, only one (1), spatially limited portion of the Property is viable for development. Pursuant to Section 106.02(B)(6), Clearing of native vegetation (Class I and II habitats) shall be limited to the immediate development area which shall be shown as the area of approved clearing on the site plan approved by the City Biologist and shall be subject to the mitigation and management requirements of the Code.

A Habitat Evaluation Index prepared by Terramar Environmental Services, Inc, delineates hammock quality, and specifically identifies approximately 47,457 square feet or 1.09 acres of low-quality hammock. Pursuant to Code table 106.16.1, Low-Quality Hammock has a 50% open space-requirement, which permits the Applicant to clear up to 23,728.5 SF for the Development (“Development Area”).

The unusual composition and location of the spatially limited Development Area limits the potential configuration and placement of the 15,200 SF warehouse, and the configuration shown in the Overall Site Concept Plan for Florida Keys Aquarium Encounters (“Site Plan”), However, the applicant states that it is not feasible to develop the warehouse within the Development Area without a variance reducing the required wetland buffer from 50’ to the SFWMD standards, which require the wetland buffers to have an average of twenty-five feet (25’) and permit a minimum of fifteen feet (15’) at any given area.

The City has previously approved projects with substantially larger developments to allow them to utilize the SFWMD’s regulations in order to permit development within limited space. The Site Plan illustrates that the Development has an average wetland buffer of 25’ and does not have any portion within the 15’ minimum requirement and is therefore compliant with the SFWMD regulations.

B. *Hardships:*

The special conditions and circumstances explained above were not created by Applicant.

C. *No Detriment:*

The relief will not create a substantial detriment, as determined by the Director, to the public good, substantially impair affected wetland resource, in the opinion of the biologist or impair the intent and purpose of the LDRs or applicable policies under which the variance is granted. The additional of a conservation easement on the parcel increases the ability to retain natural resources.

Additionally, the Development will allow for coral propagation and manatee rehabilitation, both of which are of large public interest in the Florida Keys. Additionally, the proposed laboratory and classroom will increase interactive and educational opportunities for the public.

D. *No Special Privileges:*

The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated. Similar variances have been sought and approved for Fisherman's Community Hospital and the Coco Plum Wastewater Treatment Plant.

E. *Use Authorized:*

The site was previously authorized through a conditional use and amendments to the conditional use, and the Conditional Use application is addressed further in this staff report.

F. *Relevant Factors:*

1. Physical Characteristics of the proposed construction.

The proposed construction is a fifteen thousand two-hundred square foot (15,200 sf) non-residential building, as a Warehouse for marine life and coral propagation, along with raised walkways, and a dock.

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

The use of the property is not dependent on the granting of the variance. The property can continue to be used in its current format. However, any redevelopment of the site requires a conditional use and site plan approval.

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

The granting neither increases nor decreases the danger to life or property.

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

Granting of the variance would permit the applicant to increase educational and interactive opportunities to the public, allowing them to experience the wonders of the Florida Keys and would assist in the much-needed propagation of coral and the rehabilitation of manatees, which are often injured or killed by boats.

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

The site currently has structures approved through conditional use. This conditional use seeks to expand the uses further. With the neighboring zoning requirements, screening and buffering will reduce impact to neighboring residential properties.

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

The approval of the variance allows for the proposed development to meet fire truck turnaround standards.

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

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

RECOMMENDATION:

Staff recommends that approval of the variance with the following conditions:

1. All conditions of the Conditional Use approval.
2. A recordation of a conservation easement on the project parcel within the wetland area.
3. Protection of the wetland area shall be assured through a conservation easement recorded in the public records of Monroe County, Florida, pursuant to Chapter 106, Article 8 – “Conservation Management Areas”.
4. To reduce further impact potential to the wetlands for this setback reduction Staff is recommending a six-foot-high fence or wall, between the development and the wetlands. The height of the wall as measured from the improved grade would ensure that human encroachment is less likely to occur.

EVALUATION FOR COMPLIANCE WITH THE LAND DEVELOPMENT REGULATIONS:

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

CRITERIA

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

This site is located within the Mixed Use Commercial and Conservation 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.”

Policy 1-3.1.4 also states that the “principal purpose of the Conservation land use category is to provide for the preservation of natural and historic resources and passive resource-based recreational uses.” Development on the site will not disturb the Conservation area of the parcel.

However, a small portion is proposed to be disturbed to provide access to the MU portion of the site.

The area of development on the parcel included in the proposed project has a Mixed Use (MU) zoning designation. The purpose of the district is described below:

- Section 103.09 Mixed Use Districts of the Land Development Regulations (LDRs) states, “The MU zoning 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 US 1 corridor... The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large”.

Conditional Use approval is required pursuant to Table 103.15.1. In the Mixed-Use District, the specific use of, “Amusement or Sea life parks” requires Conditional Use approval.

The first building of 2,800 square feet was developed using existing commercial floor area credited to the site. The remaining ~~6,030~~ 15,200 square feet of commercial floor area proposed under phase II of the project must be applied for and allocated through the Commercial Building Permit Allocation System (CBPAS).

The project acreage is adequate for the proposed development. The following table assesses required acreage for the proposed use.

Type of Use	Amount	Square Feet Required	Site Utility
Commercial Retail – medium intensity (Encounter Center)	2,800 sf	6,222 sf	8.4%
Institutional (office, laboratory)	6,030 15,200 sf	20,100 50,667 sf	68.0 %
Total	-	-	76.4%

Therefore, it is staff’s opinion that 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;

This site 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 is compatible with adjacent uses and consistent with the overall land use pattern, which is heavily focused on retail sales and service and commercial activity along the U.S. 1 corridor. The development of the site will result in significant improvement to the site development quality, including landscaping and stormwater management. These improvements are expected to have a positive benefit on the surrounding uses and the City of Marathon.

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

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

The proposed use is the development of new commercial buildings which are not expected to have any adverse impact on the health, safety, and welfare of the public.

The City Fire Marshal has reviewed the project plans and provided comments at the Technical Review Committee Meeting outlining minimum requirements for the project, including the following:

- Must comply with NFPA 1 and NFPA 101 must provide access for Firefighting and Rescue equipment.
- Must be able to supply appropriate water supply for structure.

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

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

- Must meet all conditions of the Fire Marshal prior to permit issuance.

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 proposed development footprint is within the MU portion of the parcel. The structure is proposed in the upland area that is classified as low-quality hardwood hammock. According to table 106.16.1 low quality hammock has a 50% open space ratio. The applicant is proposing a wetland setback of 25’, which is less than the code required 50’ as noted in E. 6 below. Thus, the applicant is seeking a variance to allow this to occur as noted earlier in this report.

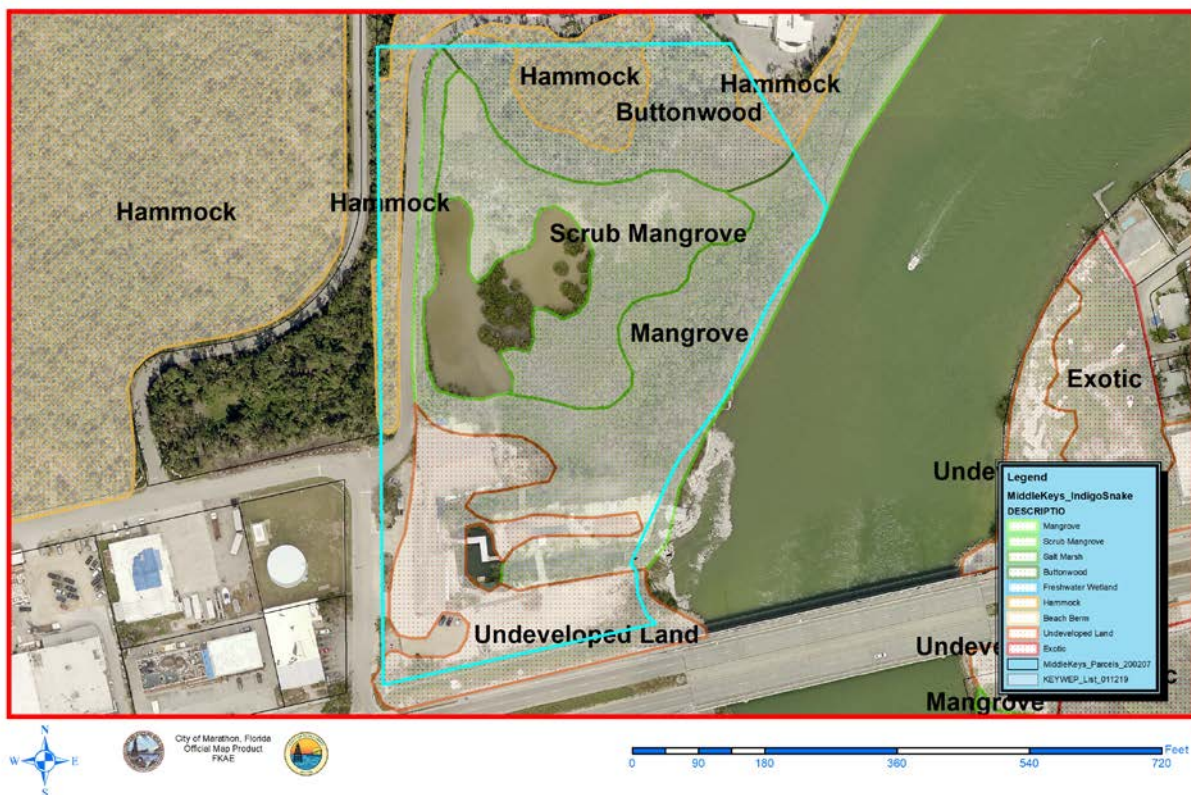
Previous approval included restoration activities and a subsequent Conservation Easement are proposed within areas of the parcel zoned C-NA as required by the South Florida Water Management District permit. The above noted conservation easement can be expanded to line up with the neighboring properties conservation easement. Therefore, a conservation easement in a form approved by the City Attorney must be provided for the wetland area. Transplantation

of native vegetation on site will be the priority. Such vegetation must survive for one year after transplantation. Any native vegetation that does not survive or is not a type that handles transplantation well will be mitigated in a ration of three trees for every one tree removed.

The applicant has submitted updated preliminary stormwater/drainage plans as required by the Conditional Use permit. City approval is required for the stormwater management system prior to building permit approval.

Figure 4 shows that this area falls under the category of mangroves. Should any development necessitate the removal of existing native vegetation within these areas an impact determination will be made using the Species Assessment Guides.

**Figure 4
Species Focus Area Habitat**



Site landscaping will consist of 75% native species, per Chapter 107, Article 8. The native vegetation will improve the environmental quality of the site and reduce irrigation needs.

Therefore, the request is ***not in compliance*** with the requirements of these sections.

- A conservation easement in a form approved by the City Attorney must be provided for the wetland area.
- City approval is required for the stormwater management system prior to building permit

approval.

- Should the variance not be approved, the Conditional Use may be approved with the conditions that the 50' wetland setback be met prior to permit issuance.
- Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
- Staff requires that upon planning review, if the redevelopment is found to have any effect on the Eastern Indigo Snake Habitat, then the prescribed protection measures must be undertaken, and the information poster posted on site.

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;

Access to the site is via Richard Street (aka 117th Street Gulf) which intersects with US 1.

The applicant submitted a Level III traffic study, prepared by Carter & Burgess Inc., in conjunction with the original approval in 2005. The study reported that while more trips would be added to this section of U.S. 1, there was adequate reserve capacity to absorb these new trips. With the proposed elimination of the five (5) workforce housing units in 2010, that amendment generated a less intense use than the original submittal. With this amendment the additional 9,170 square feet would generate 46 additional daily trips. At the peak demand hours, there would be 6 trips at the peak morning traffic (4 entering & 2 leaving), 6 trips at the peak evening traffic (5 leaving & 1 entering).

The Assistant City Fire Marshal has reviewed the proposed development plans and circulation is acceptable.

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

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

Parking requirements are outlined in Sections 107.46 (Parking Schedule).

Use	Code Citation	Requirement	Spaces Required	Spaces Provided
Retail Sales and Service	107.46.1	3 per 1,000 sf of GFA, plus 1 per employee at the largest shift	21	36
Warehouse/Storage	107.46.1	3 per 1,000 sf of GFA	16	8

Total			37	45
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Section 107.52 includes a requirement that one handicapped space be provided for every 25 spaces required. For 37 required spaces, 2 handicapped spaces are required. Two additional spaces are provided for this area that in addition to the two that are previously provided.

Per Section 107.48, the Code also requires bicycle parking to be provided at a rate of one space for every ten parking spaces or two spaces for each public and employee entrance, whichever is greater. A bicycle rack is provided.

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

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

No detrimental noise, glare or odors are expected to be generated by any of the uses.

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

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

Section 107.39 requires that all dumpsters and recycling bins be fully enclosed and screened. The existing development meets this criterion. The site plan does not indicate that the dumpsters are screened and located for easy access and waste removal.

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

- Final site plan must show screened dumpster enclosure prior to permit issuance.

5. Utilities, with reference to location and availability;

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

- Water: The Florida Keys Aqueduct Authority (FKAA) will provide potable water for the facility.
- Wastewater: This site is located in Service Area 5 of the City's Wastewater Treatment Project and will connect to the City Wastewater system when available.
- Solid Waste: Marathon Garbage Service will provide solid waste disposal.
- Electric: Florida Keys Electric Cooperative Association, Inc. (FKEC) will provide power to the development.
- Surface Water: The applicant has provided stormwater design information suitable for the Conditional Use application review which demonstrates compliance with City standards.

- Roadways: The applicant has submitted a traffic study which meets the requirements for the Conditional Use.

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.
- The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

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

Section 107.71 requires that parcels with an MU zoning designation provide a Type 1 Streetscape Treatment for all parcels along US 1. The proposed Streetscape Treatment Type 1 is in compliance.

The portion of the property that is zoned Conservation Native Area (C-NA) is bordered by a portion of Conservation Native Area (C-NA) to the north and west, which requires no buffer. The portion of the property that is zoned Mixed Use (MU) is bordered to the north by Residential High (RH) which requires a Medium Type buffer. This portion of the parcel is primarily natural habitat which creates an effective natural buffer. This buffer will be further increased by the relocation of the native vegetation within the building footprint. The applicant is proposing a native transition buffer between the developed and the native area portion of the parcel.

An area of the property zoned Mixed Use (MU) is adjacent to 1stAvenue which requires a Streetscape Type 3 Buffer. The proposed Streetscape Type 3 Buffer is in compliance.

Section 107.66 requires that parking areas be landscaped with canopy trees positioned to provide, at maturity, 50% canopy coverage of the paved parking areas or with canopy trees located within landscaped islands every ten (10) spaces and within linear landscaped islands between head-to-head parking. The proposed site plan shows the correct quantity of landscape material.

At the time of permitting, the applicant will provide the City with a list of all native trees that will be impacted by development with a mitigation and/or transplantation plan to be approved by the biologist. Additionally, all landscape plans, including parking lot landscaping, must be approved by the biologist at time of permitting.

The submitted plans show use of 75% native vegetation, as required by Code. All invasive exotic vegetation, including Brazilian Pepper and Australian Pine, must be removed from the site as a condition of approval.

The minimum setback requirements for structures in the MU district are as follows:

Front (Richard Street)	30 feet
Side (U.S. 1)	10 feet
Shoreline	20 feet from Mean High Water Line (MHWL) or landward edge of the mangroves
Wetlands	50 feet

The proposed site plan shows that the structures will meet the required setbacks, excluding the wetland setback. Thus, the applicant is seeking the variance noted above.

Therefore, with the below conditions, the request is *not in compliance* with the requirements of this section.

- An approved variance is required for the setback reductions from the wetlands.
- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.

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

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

Article 107.54 establishes criteria for lighting, including light pole light limitations and other technical criteria. The applicant will be required to submit a detailed lighting plan for approval prior to Building Permit issuance.

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

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

8. Required yards and other open space;

The open space requirement for the Mixed Use (MU) land use district is 20%, as per Table 103.15.2 of the Code. According to table 106.16.1 low quality hammock has a 50% open space ratio. Previous calculations provided by the applicant show that site had 242,299 square feet of open space. The portion of the site zoned C-NA will not be developed, thus having a 100% open space ratio.

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

9. General compatibility with surrounding properties; and

The character of the immediate vicinity of the parcel can be described as a mix of uses, with vacant native area to the north and northwest, residential to the north on the other side of the native area, and commercial to the west and south. As this property is along U.S. 1, where the majority of commercial activities occur, developing the site to include the large commercial operation at the front and preserved native area to the middle, and further commercial within the upland area is consistent with the character of the area.

Section 107.40 restricts the height of buildings to 42’ as measured from the crown of the roadway or unimproved grade. The site plan shows that the proposed buildings are below 37’.

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

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

There are no special requirements set forth in the LDRs for this particular use, other than those reviewed above.

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

CONCLUSION:

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

The proposed development is an amendment to a previously approved Conditional Use permit. The applicant is proposing changes to the site plan, most notably the increase beyond the previously approved second phase. 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.

Conditions of Approval

- 1) A CBPAS allocation for 6,030 square feet must be obtained prior to development of the second building;
- 2) Must meet all conditions of the Fire Marshal prior to permit issuance.
- 3) A conservation easement in a form approved by the City Attorney must be provided for the wetland area.

- 4) City approval is required for the stormwater management system prior to building permit approval.
- 5) Transplantation shall be the priority mitigation plan for the native vegetation in the low-quality hammock per Section 106.09.
- 6) The applicant will meet all floodplain related requirements as part of the building permit process.
- 7) Final site plan must show screened dumpster enclosure prior to permit issuance.
- 8) City approval is required for the stormwater management system prior to building permit approval.
- 9) City approval of the connection to the city wastewater utility will be required.
- 10) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
- 11) An approved variance is required for the setback reductions from the wetlands.
- 12) Should the variance not be approved, the Conditional Use may be approved with the conditions that the 50' wetland setback be met prior to permit issuance.
- 13) All conditions of the Variance are incorporated herein.
- 14) A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
- 15) A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
- 16) All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
- 17) A final lighting plan must be submitted prior to permit issuance.
- 18) The applicant will obtain any required permits from SFWMD, DEP, and ACOE prior to building permit issuance.

Exhibit A

Sponsored by: Puto

CITY OF MARATHON, FLORIDA RESOLUTION 2005-159

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE; AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS AND RESIDENTIAL DWELLING UNITS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000

WHEREAS, on the 17th day of October, 2005, the City of Marathon Planning Commission and on the 8th day of November, 2005, the City of Marathon City Council, conducted properly advertised public hearings regarding the request submitted by Florida Keys Animal Encounters, LLC (the "Applicant"), for a major conditional use permit pursuant to Sections 9.5-69 of the City Code (the "Code"); and

WHEREAS, the purpose of the major conditional use permit is to allow the Applicant to develop commercial buildings and affordable residential dwelling units for a sea life amusement park and marine educational facility (the "Proposed Use") at the Property.

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 Number 2005-15, a copy of which is attached hereto as Exhibit "A", granting a major conditional use to the Applicants for the Proposed Use. The Director of Planning is authorized to sign the Development Order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 22nd day of November, 2005.

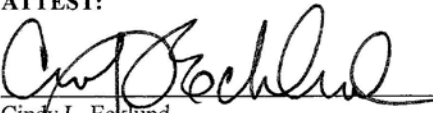
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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


ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney



**CITY OF MARATHON, FLORIDA
MAJOR CONDITIONAL USE
DEVELOPMENT ORDER # 2005-15**

A DEVELOPMENT ORDER APPROVING THE MAJOR CONDITIONAL USE APPLICATION SUBMITTED BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC, FOR A MAJOR CONDITIONAL USE PERMIT, PURSUANT TO SECTION 9.5-69 OF THE CITY OF MARATHON CODE, AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS AND RESIDENTIAL DWELLING UNITS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA (THE "PROPERTY"), HAVING REAL ESTATE NUMBER 00104130-000000; PROVIDING FOR A TERM OF THE APPROVAL; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Keys Animal Encounters, LLC (the "Applicant") owns the Property and applied for a Major Conditional Use approval to redevelop the existing commercial floor area and residential units on the Property which is located in the Suburban Commercial (SC) land use districts (the "Application"); and

WHEREAS, the City of Marathon Planning Commission (the "Commission"), in accordance with the provisions of Sections 9.5-22 and 9.5-69 of the City of Marathon Land Development Regulations (the "LDR's"), met to review the Application to determine its compliance with the applicable regulations on October 17, 2005; and

WHEREAS, the Commission recommended conditional approval of the Application to the City of Marathon City Council (the "Council"); and

WHEREAS, the Council in accordance with the provisions of Sections 9.5-21 and 9.5-69 of the LDR's, met to review the Application to determine its compliance with the applicable regulations on November 8, 2005; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by the Applicant and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. Based on the submitted site plan, the entire Property is 8.99 acres, but the portion to be developed is 1.7 acres. Currently the site includes 2,800 square feet of commercial floor area. The Applicant is proposing one 2,800 square foot commercial building with two (2) affordable

dwelling units, one 6,000 square foot commercial building with three (3) affordable dwelling units, and several accessory structures for the sea life amusement park, including an animal encounter tank.

2. In accordance with Section 9.5-65 of the Code, the Commission and Council considered and determined the Applicants met the following criteria:
 - a. The Proposed Use is consistent with goals, objectives and policies of the City Comprehensive Plan (the "Plan") and Chapter 9.5 of the Code; and
 - b. The Proposed Use is consistent with the character of the immediate vicinity of the parcel proposed for development; and
 - c. The design of the Proposed Use minimizes adverse effects, including visual impacts, of the proposed use on adjacent properties; and
 - d. The Proposed Use will not have an adverse effect on the value of surrounding properties; and
 - e. The public facilities and services, including but not limited to roadways, park facilities, police and fire protection, hospital and medical services, hurricane shelter, drainage systems, refuse disposal, water and sewers, and schools are adequate; and
 - f. The Proposed Use complies with all additional standards imposed on it by the particular provisions of Chapter 9.5 of the Code, authorizing such use and by all other applicable requirements of the Code.

CONDITIONS IMPOSED:

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

1. The handicap spaces must be 21 feet long.
2. Prior to issuance of building permits, the Applicant must submit stormwater management plans demonstrating the redeveloped Property will comply with the applicable City and State stormwater regulations. Additionally, no direct outfalls to Outstanding Florida Waters shall be permitted.
3. The Applicants will be required to install three (3) fire hydrants on the Property, upon the recommendation of the Fire Department. All new buildings shall require the installation of sprinkler systems and otherwise comply with all Fire Alarm System and Life Safety Code Requirements prior to issuance of any building permits.
4. Two (2) 120% Affordable ROGO allocations have been awarded to the project out of the City's bank of Affordable ROGO allocations. The units shall be for rental and employee housing only and the applicant shall record a restrictive covenant prior to the issuance of any building permits for such units. The restrictive covenant shall be for a minimum of fifty (50) years and shall be renewable for two (2) fifty (50) year periods. The developer will enter into an agreement with the Middle Keys Community Land Trust (MKCLT) or other similar organization to provide services for both the initial and annual income qualifications of tenants of the affordable/workforce housing. This agreement shall be in place and approved by the City prior

to the issuance of a CO for the affordable/working force housing units. The remaining three (3) employee units must obtain Affordable ROGO allocations prior to development.

5. The affordable/workforce housing units must obtain a CO concurrent or prior to the CO for the commercial floor area of the respective building they are to be built in.
6. An NROGO allocation for 6,000 square feet must be obtained prior to development of the second building.
7. The applicant shall submit an application for a building permit(s) within one (1) year of the date of approval of the conditional use. Should the applicant fail to submit an application for building permit(s) prior to the expiration of this conditional use approval, the two (2) 120% Affordable ROGO allocations awarded under this conditional use approval shall be returned to the City.

VIOLATION OF CONDITIONS:

The Applicants understand and acknowledge that they 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 Applicants or their successor or designee is in non-compliance with this Development Order 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 major conditional use is hereby GRANTED subject to the conditions contained herein.

RECORDING:

The Applicants shall at their sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City.

The Applicants shall provide the City with proof of the recording of the Development Order in accordance with the provisions of this paragraph.


EFFECTIVE DATE:

The Director of Planning shall sign this Development Order, and it shall not take effect for thirty (30) days following the date it is rendered/filed with the City Clerk. During that time, the major 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.

23 Nov 05
Date


Gail E. Kenson, AICP
Planning Director

This Development Order was filed in the Office of the City Clerk of this 23 day of Nov, 2005.


Cindy L. Ecklund, City Clerk

NOTICE

Section 9.5-72 (a) of Marathon City Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

Under the authority of Section 9.5-72(a) 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 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 six (6) months of the expiration of the Department of Community Affairs appeal period 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 Community Affairs 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 Florida Keys Animal Encounters, LLC, 10602 7th Avenue, Marathon, Florida 33050, this 23 day of November, 2005.



Cindy L. Ecklund, City Clerk

Exhibit B

**CITY OF MARATHON, FLORIDA
RESOLUTION 2010-40**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR AN AMENDMENT TO A CONDITIONAL USE PURSUANT TO SECTION 102.79 OF THE MARATHON CODE ENTITLED “MINOR AND MAJOR AMENDMENTS TO EXISTING CONDITIONAL USES,” AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on the 19th day of April 2010, the City of Marathon (the “City”) Planning Commission (the “Commission”) and on the 27th day of April, 2010, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by Florida Keys Animal Encounters, LLC (the “Applicant”), for an amendment of a conditional use permit pursuant to Chapter 102, Article 13 of the Marathon Code (the “Code”); and

WHEREAS, the amendment removes certain conditions of the major conditional use permit and modifies the site plan approved by Resolution 2005-159 of the City.

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 2010-02, a copy of which is attached hereto as Exhibit “A”, granting the Applicant’s request for an amendment to a previously approved conditional use. The Director of Planning is authorized to sign the development order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11th DAY OF MAY, 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

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:**



City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2010-02**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY FLORIDA KEYS ANIMAL ENCOUNTERS, LLC FOR AN AMENDMENT TO A CONDITIONAL USE PURSUANT TO SECTION 102.79 OF THE MARATHON CODE ENTITLED "MINOR AND MAJOR AMENDMENTS TO EXISTING CONDITIONAL USES," AUTHORIZING THE DEVELOPMENT OF COMMERCIAL BUILDINGS TO OPERATE AS A SEA LIFE AMUSEMENT PARK AND A MARINE EDUCATIONAL FACILITY, AT PROPERTY LOCATED ON THE NORTHEASTERN CORNER OF THE INTERSECTION OF OVERSEAS HIGHWAY AND 117TH STREET, GULF, AND LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 4, SECTION 5, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACCAS, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00104130-000000; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Keys Animal Encounters, LLC applied for an amendment to a previously approved Conditional Use to develop the Florida Keys Animal Encounter Center on property located in the Mixed Use (MU) and Native Area (C-NA) land use district (the "Application"); and

WHEREAS, the Planning Commission (Commission), in accordance with the provisions of Sections 101.02 and 102.75 of the Code conducted a properly advertised public hearing on the Application on April 19, 2010; and

WHEREAS, the Commission recommended approval of the Application to the City Council (the "Council"), subject to conditions; and

WHEREAS, in accordance with the provisions of Sections 101.01 and 102.76 of the Code the Council met to review the Application to determine its compliance with the applicable regulations on April 27, 2010; and

WHEREAS, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by Florida Keys Animal Encounters, LLC and does hereby find and determine as provided below.

FINDINGS OF FACT:

1. The applicant is proposing one 2,800 square foot tiki-style commercial building, one 6,030 square foot commercial building, and several accessory structures for a sea life amusement park, including an animal encounter tank.
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 Code;
- b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
- c. The proposed use will not adversely affect the health, safety, and welfare of the public; and
- d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
- e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required, with particular attention to item 1 above;
 3. The noise, glare or odor effects of the conditional use on surrounding properties;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and
 10. Any special requirements set forth in the LDRs for the particular use involved.

CONDITIONS IMPOSED:

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

- 1) A CBPAS allocation for 6,030 square feet must be obtained prior to development of the second building;
- 2) The applicant will obtain approval of final landscaping and mitigation plans (as needed) and lighting plans in coordination with the City Biologist prior to building permit issuance;

- 3) The applicant will be required to install two (2) fire hydrants on the Property. The applicant will provide fire protection plans in accordance with fire protection requirements as outlined by the City Fire Marshal;
- 4) The applicant will meet all floodplain related requirements as part of the building permit process;
- 5) The applicant will obtain City approval of the stormwater management system prior to building permit issuance;
- 6) The applicant will obtain any required permits from SFWMD, DEP and FDOT prior to building permit issuance;
- 7) The applicant will obtain sign permits for any signs erected on the property, as required under the Code;
- 8) The applicant must meet all requirements as specified in the Technical Review Committee (TRC) letter from the City dated March 25, 2010 prior to building permit issuance;
- 9) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

VIOLATION OF CONDITIONS:

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

CONCLUSIONS OF LAW:

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

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

May 13, 2010
Date

George Garrett
George Garrett, Director of Planning

This Development Order was filed in the Office of the City Clerk of this 13 day of May, 2010.

Diane Clavier
Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) of the Marathon Code 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 Community Affairs 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 10602 7th Avenue, Golf, Marathon, FL 33050 this 14th day of May, 2010.

Diane Clavier
Diane Clavier City Clerk

Exhibit C

