



City of Marathon Planning Commission
Monday February 26, 2024
9805 Overseas Hwy
City Hall Council Chambers
5:30 PM

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

5. Please be advised that some 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 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

1. Consideration Of A Request By Uphoff Investments LLC For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Conditional Use Permits”, Authorizing The Development Of Twelve (12) Residential Units And Accessory Structures; Located At 12640 Overseas Highway Which Is Legally Described As Section 5 Township 66 Range 33 Fat Deer Key Part Lots 1-2, Monroe County, Florida, Having Real Estate Numbers 00100260-000000. Nearest Mile Marker 53.
2. An Ordinance Of The City Of Marathon, Florida; Creating Chapter 107, Article 15, “Lighting”; Providing Criteria For Both Residential And Commercial Lighting Standards; Amending Chapter 110 Definitions; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The Department Of Commerce After Final Adoption By The City Council; And Providing For An Effective Date.
3. An Ordinance Of The City Of Marathon, Florida, Amending Chapter 103 “Zoning Districts,” Article 3 “Use And Intensity Tables”, “Standards,” 103.15 “Standards”, And Chapter 110, “Definitions,” Article 3, “Defined Terms;” Modifying Accessory Structures And Accessory Uses; Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This

Ordinance; Providing For Severability; Providing For Inclusion In The Code Of Ordinances, City Of Marathon, Florida; And Providing An Effective Date.

4. An Ordinance By The City Of Marathon, Florida, Amending Chapter 101, Article 3 (“Planning Commission”) By Amending Section 101.04 Titled “General” To Delete A Portion Regarding A Mailing List; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

5. An Ordinance By The City Of Marathon, Florida, Amending Chapter 104, Article 1 (“General Provisions”) By Deleting A Portion Of Section 104.66 Titled “Wireless Services Facilities (“WSFS”)”; Specifically, Subsection G Part 4 To Comport With Modern Constitutional Constraints; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

6. An Ordinance By The City Of Marathon, Florida, Amending Chapter 107, Article 13 (“Concurrency Management”) By Amending Section 107.113 Titled “Enforcement” To Clarify The Penalties; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.



**City of Marathon Planning Commission
Monday December 18, 2023
9805 Overseas Hwy
City Hall Council Chambers**

MINUTES

Royse called the meeting of the Planning Commission to order on Monday December 18, 2023, at 5:30 pm.

In attendance: Planning Director Brian Shea, Attorney Steve Williams, Planner Amber Stonik, Planner Erin Dafoe, and members of the public.

The Pledge of Allegiance was recited.

The roll was called. Mark Senmartin-present; Mary Ann Royse-present; Mike Cinque-present; Andrew George-present; Matt Sexton-absent.

Royse called for an approval of the minutes from the last meeting. Senmartin moved to approve. Cinque seconded. The motion was approved 4-0.

The quasi-judicial statement was read into the record.

Item 1 and 2 were read into the record: A Request By Patrick Stevens On Behalf Of Floridas Duck Key Properties LLC To Amend The Future Land Use Map From Residential High (RH) To Mixed Use Commercial (MU-C) For N 50 FT Lot 3, Block 3; S 50 FT Lot 3, Block 3; And N1/2 Lot 4, Block 3; And S 1/2 Lot 4, Block 3 The Palms, Key Vaca PB4-86; Having Real Estate Numbers 00332920-000000, 00332930-000000, 00332940-000000, And 00332940-000100, Marathon, Florida, Monroe County, Florida; Nearest Mile Marker 53.

A Request By Patrick Stevens On Behalf Of Floridas Duck Key Properties LLC To Amend Land Development Regulations Zoning Map From Residential Mobile Home (R-MH) To Mixed-Use (MU) For N 50 FT Lot 3, Block 3; S 50 FT Lot 3, Block 3; And N1/2 Lot 4, Block 3; And S 1/2 Lot 4, Block 3 The Palms, Key Vaca PB4-86; Having Real Estate Numbers 00332920-000000, 00332930-000000, 00332940-000000, And 00332940-000100, Marathon, Florida, Monroe County, Florida; Nearest Mile Marker 53.

Speakers were sworn in.

Stonik presented the item.

Royse questioned adjacent commercial property ownership and state-owned conservation land.

Patrick Stevens presented the item on behalf of the applicant.

Senmartin asked if commercial use was going to be the only use or was affordable housing be combined with the project. Stevens said nothing was off the table.

George asked what types of uses could be put on the properties if these changes are approved. Shea answered that mixed use zoning has the most uses and the list is extensive.

Royse opened the meeting to public comment:

1. Roger Johnson spoke against the items.
2. Thomas Carden spoke against the items.
3. Nicole Petrick spoke against the items.

George was the only commissioner that had ex-parte communications.

Cinque started a brief discussion stating the changes would destroy the neighborhood community. All three commissioners agreed that changing to commercial use would not be good for the neighborhood.

Cinque made a motion to give council a recommendation to deny item 1, citing community character. Royse seconded. The roll was called. The item was denied 4-0.

Cinque made a motion to give council a recommendation to deny item 1, citing community character. Royse seconded. The roll was called. The item was denied 4-0.

Item 3 was pulled from the agenda.

Motion and second to adjourn at 6:06 pm.

ATTEST:

Mary Ann Royse-Planning Commissioner Chair

ATTEST:

Brian Shea-Planning Director

Audio-Video is available upon request.

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: February 26, 2024
To: Honorable Chair and Planning Commissioners
From: Erin Dafoe, Associate Planner

Agenda Item: Consideration Of A Request By Uphoff Investments LLC For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Conditional Use Permits”, Authorizing The Development Of Twelve (12) Residential Units And Accessory Structures; Which Is Legally Described As Section 5 Township 66 Range 33 Fat Deer Key Part Lots 1-2, Monroe County, Florida, Having Real Estate Numbers 00100260-000000. Nearest Mile Marker 53.

APPLICANT/ OWNER: Uphoff Investments LLC

AGENT: Steven Hurley

LOCATION: The project site is located at 12640 Overseas Hwy at nearest mile marker 53. See Figure 1.

REQUEST: A Conditional Use Permit approving the development of eight (8) Single Family Residential Units, a four-plex (4) Multifamily Unit and Accessory Structures.

LOT SIZE: Total acreage 2.45 acres or 106,722 square feet.

SURROUNDING ZONING AND USES:

	<u>Zoning</u>	<u>Use</u>
North	N/A	Open Water
West	Mixed Use (MU) and Residential High (RH)	Previous Keys Federal Credit Union and Gulfpointe Condominium
East	Mixed Use (MU)	Island Fish Company
South	Mixed Use (MU)	Wharf Marina and Bonefish Storage

EXISTING CONDITIONS:

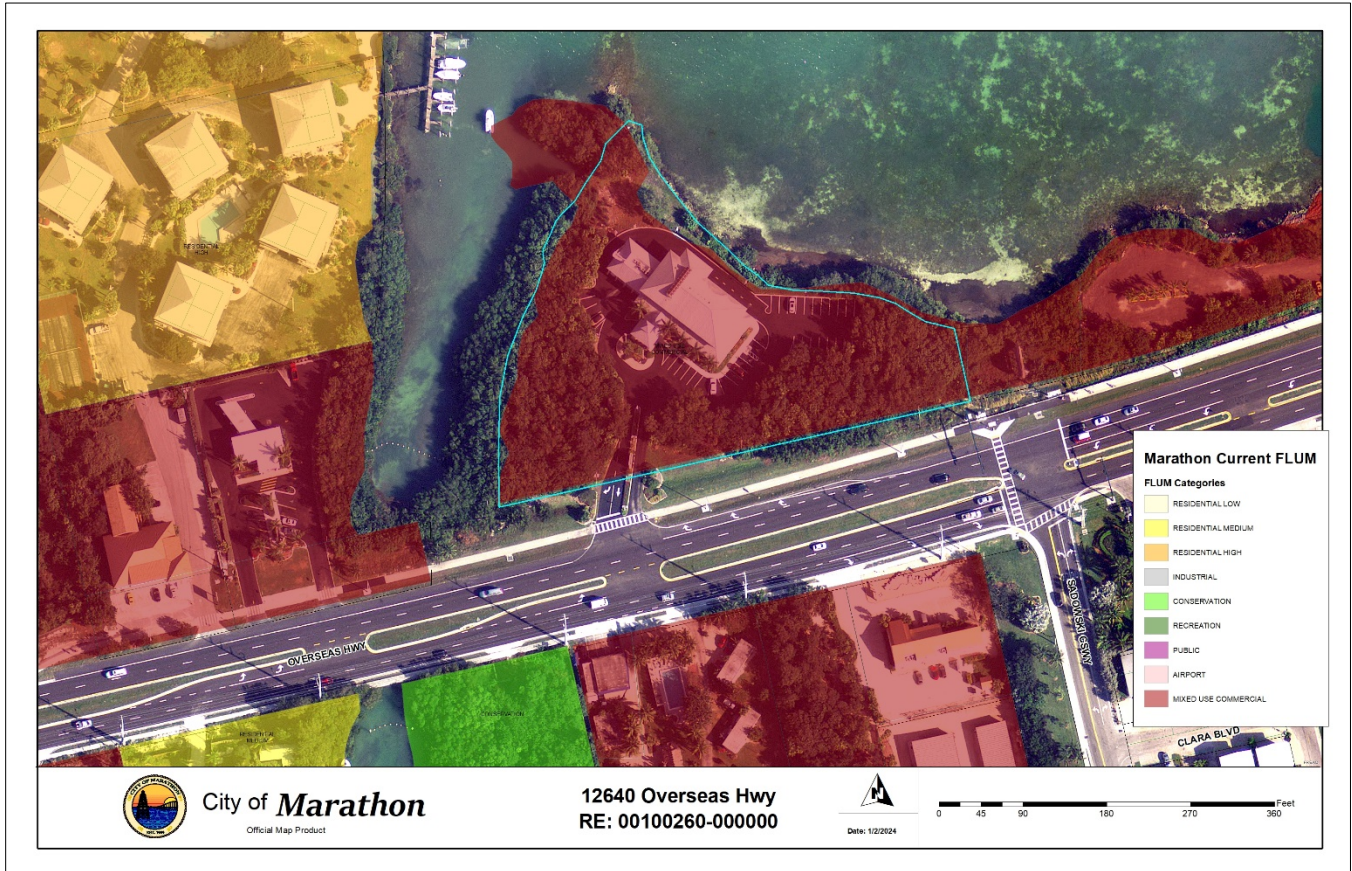
The project site consists of an existing two-story commercial building. The existing FLUM is Mixed Use Commercial (MU-C), and the zoning is Mixed Use (MU). See Figures 2 and 3.

**Figure 1
Project Site**



FUTURE LAND USE MAP DESIGNATION:
Mixed Use Commercial (MU-C). See Figure 2.

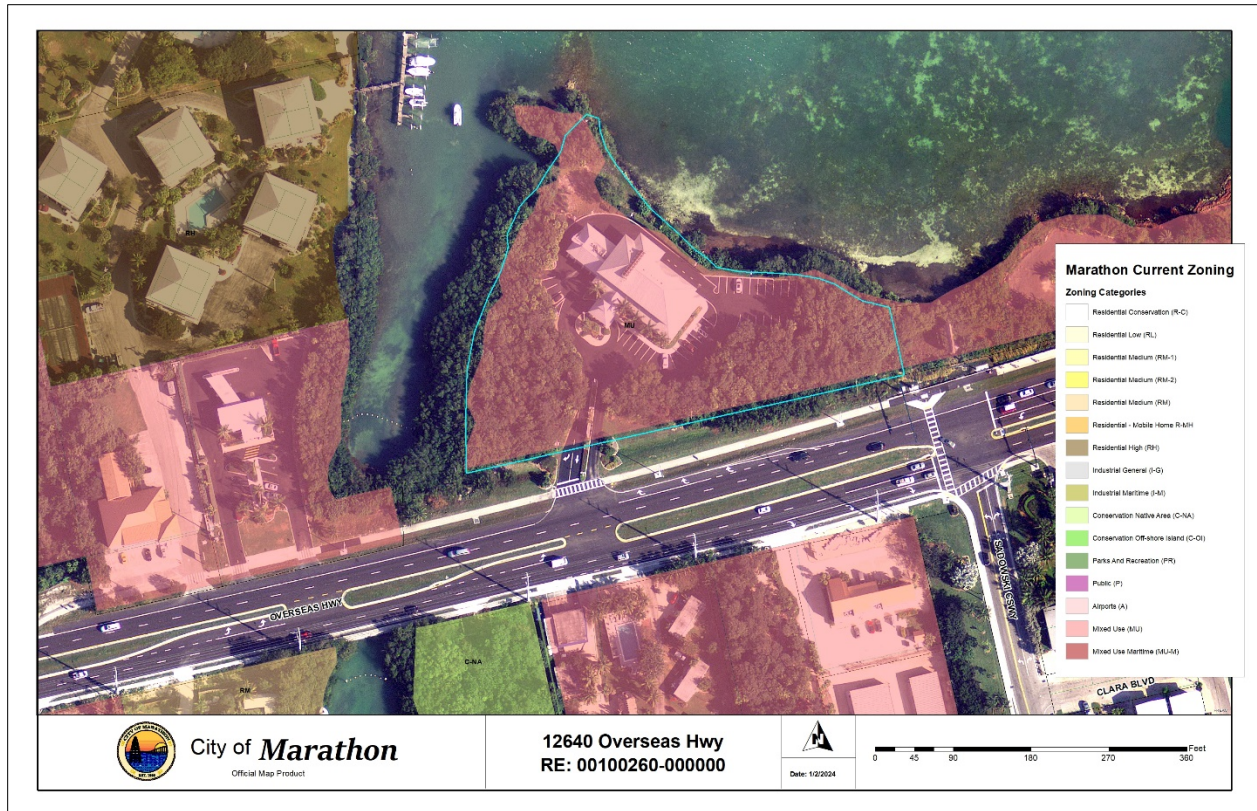
Figure 2
Future Land Use Map



ZONING MAP DESIGNATION:

Mixed Use (MU). See Figure 3.

**Figure 3
Zoning Map**



PROPOSED REDEVELOPMENT:

The Applicant requests a change of use to develop eight (8) single family residential units, a four-plex (4) multifamily residential unit and accessory structures.

BACKGROUND:

The proposed project seeks to redevelop property that was previously used as a bank. The total property size is 106,722 square feet.

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 is for 12 resident units and accessory structures, an allowed use as conditional use pursuant to Table 103.15.1 of the LDRs, supported by elements of the Comprehensive Plan. Relevant Policies concerning this project follow:

City of Marathon Comprehensive Plan

- a. “Policy 1-1.1.2 Adopt Compatibility for Residential and Non-Residential Review Criteria,”
- b. “Policy 1-1.1.3 Protect Residential Neighborhood Character,” and
- c. “Policy 1-1.1.4 Transition between Land Uses

The project is surrounded by commercial development to the south, west and east. With a section of residential development to the west.

d. Policy 1-3.1.4 Future Land Use Categories

The Future Land Use Map (FLUM) designates the parcels as Mixed-Use Commercial. Within this designation various commercial uses are permitting in addition to commercial, transient, and permanent residential uses as well as marinas and storage facilities. The project is consistent with the intent of this district and neither a zoning nor FLUM change is necessary for this project.

e. Policy 1-3.2.5 Maximum Height

The maximum height of any new structure associated with the redevelopment of the property shall not exceed 42 feet, except as provided by the City Code, as amended. The conceptual elevation plans submitted demonstrate compliance with this requirement.

f. Policy 1-3.2.7 Restrict Density and Intensity of Development

The proposed density is consistent with the thresholds outlined in Table 1-1 of the Comprehensive Plan. Based on the upland area of 2.45 acres, the proposed twelve residential units and accessory structures utilize 80% of the density allowed for this site.

g. Policy 1-3.3.1 b., e., and f. General Redevelopment Criteria

The proposed new business promotes the revitalization of the city’s commercial area, with existing commercial to the south and west. The US 1 corridor will be enhanced with the proposed landscaping.

h. Policy 1-3.4.2 Protect Established Densities & Policy 1-3.4.3 Replacement of Existing Densities and Intensities

The redevelopment plan would need 12 market rate building rights which will need to be obtained.

City of Marathon Land Development Regulations

• Section 103.09 – Mixed Use (MU)

The MU District is intended to accommodate a wide range of commercial and residential uses and activities including residential units.

• Table 103.15.1 Uses By Zoning District – Mixed Use (MU)

This redevelopment is consistent with Table 103.15.1, uses by Zoning District, via a Conditional Use Permit Application, as contained herein.

Table 103.15.2 in the Land Development Regulations establishes constraints on density and intensity allowed in the MU district based on the types of uses proposed.

Uphoff Investments, LLC	
Total 106,722 sq ft	
Market Rate (12)	87,120
Maximum allowed	101,640 sq ft (14 units)
Total Proposed	87,120 sq ft (12 units)

The project as proposed meets the basic definition of development in the MU zoning district and will not exceed any density constraints imposed on the type proposed.

• Section 107.47 Parking

Parking for the site and the project is met with the proposed required parking spaces. The development provides twenty-four interior standard parking spaces, and one exterior handicap spaces for a total of twenty-five spaces.

• Section 107.40 Maximum Height

The project sites are below the forty-two (42) foot height limitation of the City’s LDRs.

- Sections 107.63 – 107.72 Landscaping

The landscape plan includes a list of native trees to provide shade and temperature reduction along the internal roadway. The parcels to the east and west are zoned Mixed Use and a buffer is not required. Along US 1 corridor to the south the landscape planting will consist of a variety of native plant material varying in size and height as well as canopy trees. A mix of understory trees and shrubs will be planted in a variety of heights of maturity.

- Sections 107.73 – 107.81 Open Space

The project site meets the minimum open space requirements of twenty (20) percent and therefore meets the minimum requirements of the LDRs.

- Sections 107.82 – 107.85 Fences and Screening

The project meets City screening and landscaping requirements.

- Sections 107.87 – 107.97 Stormwater Management

The existing Stormwater Management Plan associated with this site demonstrates compliance with the requirements of the LDRs.

- Sections 107.98 – 107.102.5 Floodplain Management

The site building will be located above FEMA minimum flood elevations. Therefore, the project is compliant with this requirement of the LDRs.

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

The proposed project site is surrounded by other compatible commercial uses to the east, west and south.

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

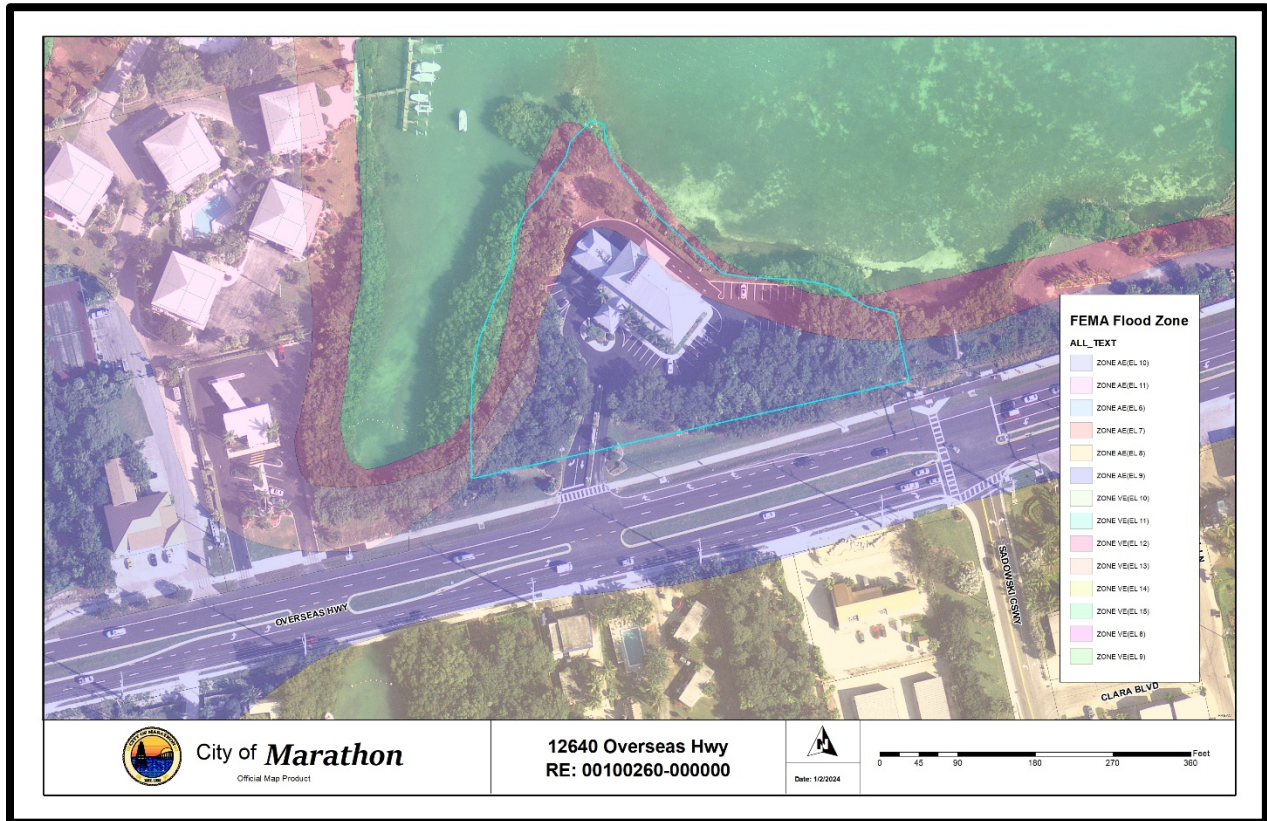
C. The proposed use shall not adversely affect the health, safety, and welfare of the public;

The proposed conditional use will enhance the community by providing affordable employee housing as well as new resident group home. The project will not cause any negative impacts to the City's health, safety, and welfare.

The existing structure will be remodeled with additional units to be built above FEMA's minimum flood elevations (AE9 and VE12) as shown in Figure 4 and is therefore compliant. Making certain the back portion of building will be altered so that the building will be located solely in the AE flood zone.

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

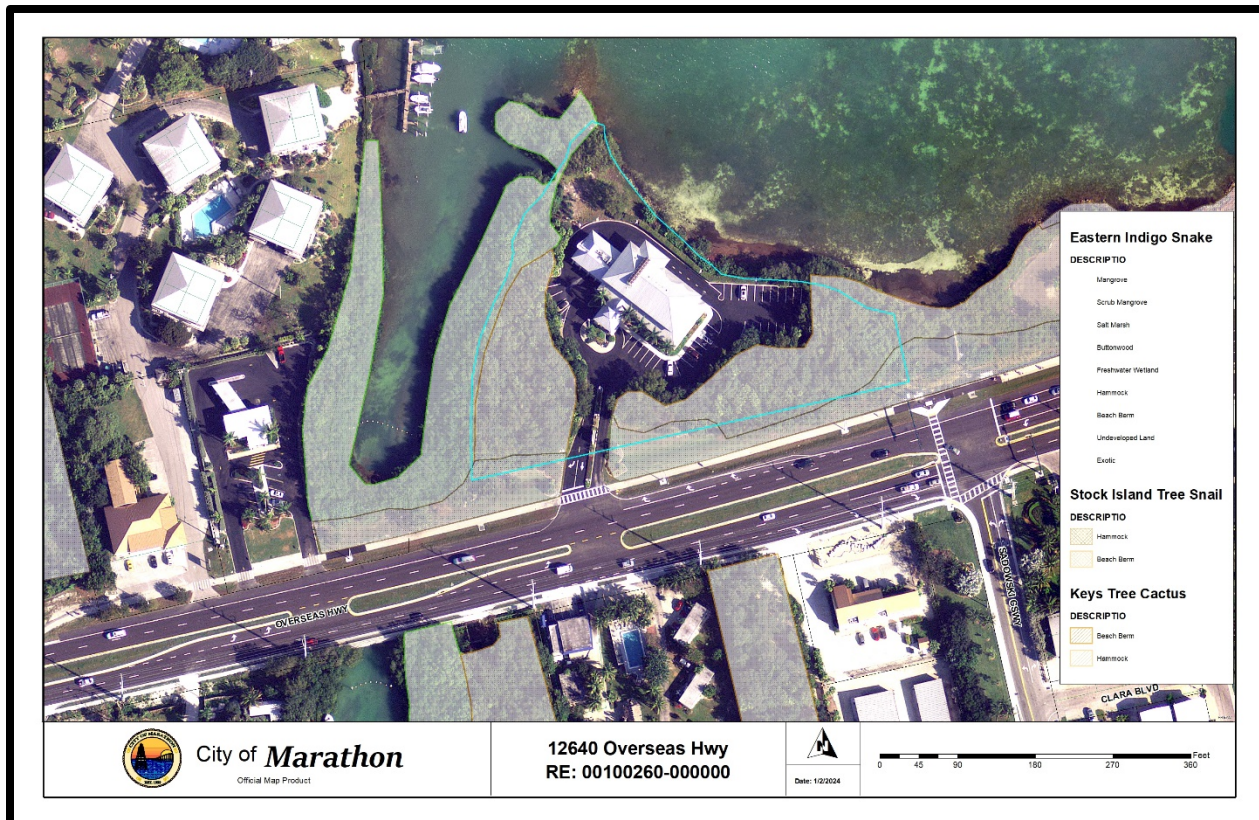
**Figure 4
Flood Zones**



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:

There will be no negative impacts on habitat, environment, or water quality parameters. The proposed stormwater management system shall retain water generated from rain events on site thereby improving the quality of the near shore waters by treating and maintaining the stormwater on site. The shoreline is developed. A map of the area indicates that surrounding properties lie within the FEMA-FWS Species Focus Area for the Eastern Indigo Snake, Keys Tree Cactus and Stock Island Tree Snail. However, this has absolutely no impact on the project before the Planning Commission and City Council. As part of the permitting process any potential impacts will be reviewed for species based upon species assessment guides.

Figure 5
FEMA – FWS Species Focus Area Maps



All vegetation on site is a mix of non-invasive exotic plantings. A building permit issued in 2020 for invasive exotic removal was completed. Several canopy and understory trees will be planted per Conceptual Landscape Plan that was submitted. Streetscape treatment along US 1 will be installed including a mixture of shrubs and canopy trees. Native vegetation must be mitigated per Section 106.10.

Project design requires containing all storm water on the property as required by Code.

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

- The project exceeds 1 acre of development, and as such an FDEP general permit for NPEDS will be required.
- An FDOT access permit and drainage permit/exemption is required for this project.
- Any native vegetation removed must be mitigated per Section 106.10.

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

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

The applicant has provided a traffic analysis for the proposed development. Parking will be provided to residents.

Table 2 12640 Overseas Highway Trip Generation Analysis Marathon, Florida								
Land Use	Size	Daily Trips	AM Peak Hour Trips			PM Peak Hour Trips		
			In	Out	Total	In	Out	Total
<i>Proposed</i>								
Single-Family Housing	8 DU	74	2	4	6	5	3	8
Multifamily Housing	4 DU	24	0	2	2	1	1	2
Total		98	2	6	8	6	4	10

Compiled by: KBP Consulting, Inc. (October 2023).

The traffic will decrease from the previous use with the new redevelopment of the property. The project is not expected to adversely impact the operational characteristics of US1, nor will it inhibit the safe flow of traffic traveling through Marathon.

Section 107.48 requires a minimum of twenty-five (25) percent of the required spaces be for bicycle parking. Based upon the proposed parking spaces calculated seven (7) bicycle parking will be required on final site plan.

The applicant does not propose a change to the driveway for this project, therefore a FDOT access permit will not be required.

Section 107.43 requires site triangles where the access drive intersects with the street.

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

- Final site plan must show bicycle racks pursuant to Section 107.48.

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

Parking requirements are outlined in Section 107.47 (Mixed-Use Development Parking Requirements). The project provides adequate parking spaces as required.

Use	Code Citation	Requirement	Spaces Required
Mixed Use Development (housing)	107.47	Two (2) spaces per three (3) bedroom dwelling unit	24
Total Required			24
Total Provided			25

Therefore, 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;

The proposed use has no known impact on the health, safety, and welfare of the public. No detrimental noise or glare is expected to be generated by the proposed use. Appropriate screening and buffering measures will be required per code and site plan.

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

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

Section 107.39 requires that all dumpsters be fully enclosed and screened.

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

- Final site plan must include dumpster pursuant to Section 107.39.

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. The project will utilize existing space and will have no additional burden on City utilities or public services.

- Wastewater: The applicant will provide wastewater and sewage collection and disposal through cooperation with the Utilities Department.
- 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 redevelopment will have a de minimis impact on recreation and open space.
- Roadways: A traffic study was completed to analyze the impact on transportation facilities resulting in less of an impact from the previous use.
- Educational Facilities: This redevelopment will have a de minimis impact on educational facilities.

Therefore, 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.
- Applicants must obtain all outside agency approvals.
- 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;

A landscape plan has been submitted for this application. The plan addresses the required parking lot and US 1 corridor for plantings.

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

- A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.

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.

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 developed; therefore, a twenty percent open space requirement applies and the site complies with this minimum requirement.

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

9. General compatibility with surrounding properties; and

The proposed development is a residential development. The scale and layout of the proposed building are consistent with the City Code.

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 104.48 Residential Dwelling Units contains special requirements.

The following criteria are applicable to this proposed development:

- Two (2) side yards are required for stacked duplexes.
- Townhouses are limited to ten (10) dwelling units per row, except for affordable housing.
- The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
- The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
- Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
- The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.

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

CONCLUSION:

The Conditional Use Approval process 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 consistent with the existing land use patterns and is expected not to produce any nuisances, traffic congestion, or threat to public health, safety, or welfare. 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.

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

RECOMMENDATION:

Planning staff recommends approval of the proposed Conditional Use Permit allowing the development of twelve (12) residential units and accessory structures with the following conditions:

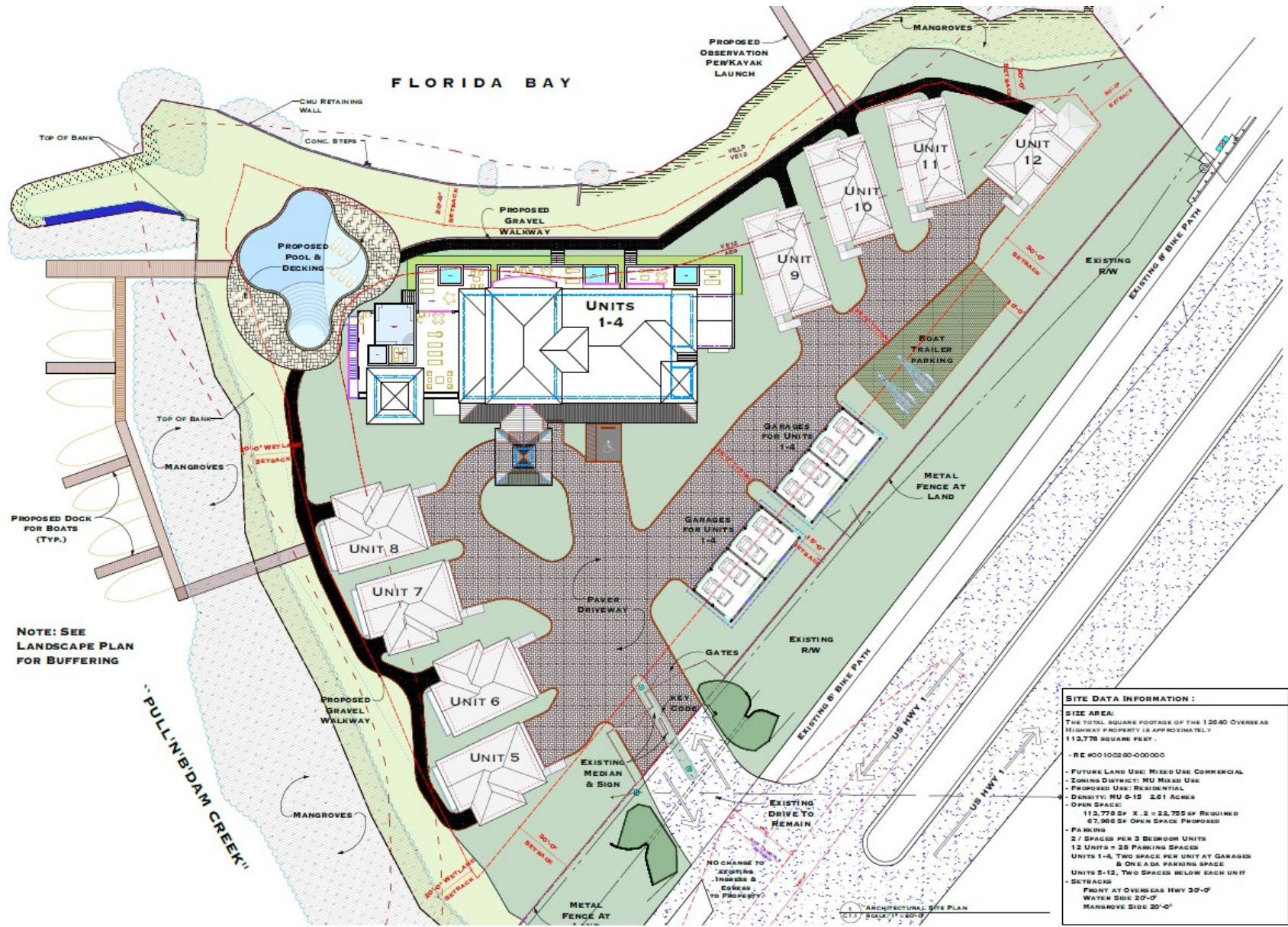
Conditions of Approval

1. All signs will be reviewed and approved for compliance with the City of Marathon LDR's.
2. As part of the permit application, all conditions of the Fire Marshal must be met prior to permit issuance, and hydrants must be operational prior to buildings going vertical.
3. City approval is required for the stormwater management system prior to Building Permit Approval.
4. Applicants must obtain all outside agency approvals prior permit issuance and prior to project initiation.
5. A Final Landscape Plan must be submitted showing the proper treatments and buffers, including the appropriate treatment types and trees.
6. A Final Site Plan must be submitted showing the buildings meeting the required setbacks, parking locations, and access drives.
7. A sewer flow estimate from an engineer will be required to reassess any additional impact.
8. City approval of the connection to the City Wastewater Utility will be required.
9. The project exceeds 1 acre of development, and as such an FDEP general permit for NPEDS will be required.
10. Any native vegetation removed must be mitigated per Section 106.10.
11. The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.
12. The total area of the mixed-use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.
13. Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (2/10) of unit floor area or a minimum of 60 square feet in size.
14. The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (1/10) of unit floor area.
15. The Applicant must obtain and transfer twelve (12) market rate housing units, to be transferred via the Transfer of Building Rights (TBR's), BPAS process, or any other

legally established process prior to building permit issuance. THE APPROVAL OF THE REQUESTED CONDITIONAL USE PERMIT AMENDMENTS DO NOT CONVEY OR GRANT A VESTED RIGHT OR ENTITLEMENT TO FUTURE ALLOCATIONS BY THE CITY OF ANY RESIDENTIAL UNITS NOT CURRENTLY IN POSSESSION BY THE APPLICANT AS REFERENCED IN THE PROPOSED CONDITIONAL USE PERMIT.

16. The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.
17. Final site plan must show bicycle racks.
18. Final site plan must include screened dumpster pursuant to Section 107.39.

SITE PLAN



NOTE: SEE LANDSCAPE PLAN FOR BUFFERING

SITE DATA INFORMATION :	
SIZE AREA:	THE TOTAL SQUARE FOOTAGE OF THE 12640 OVERSEAS HIGHWAY PROPERTY IS APPROXIMATELY 113,778 SQUARE FEET.
	- RE #00100260-000000
	- FUTURE LAND USE: MIXED USE COMMERCIAL
	- ZONING DISTRICT: MU MIXED USE
	- PROPOSED USE: RESIDENTIAL
	- DENSITY: MU 5-15 2.61 ACRES
	- OPEN SPACE:
	113,778 SF X .2 = 22,755 SF REQUIRED
	67,966 SF OPEN SPACE PROPOSED
	- PARKING
	27 SPACES PER 3 BEDROOM UNITS
	12 UNITS = 28 PARKING SPACES
	UNITS 1-4, TWO SPACE PER UNIT AT GARAGES
	& ONE ADA PARKING SPACE
	UNITS 5-12, TWO SPACES BELOW EACH UNIT
	- SETBACKS
	FRONT AT OVERSEAS HWY 30'-0"
	WATER SIDE 20'-0"
	MANGROVE SIDE 20'-0"

LANDSCAPE PLAN



NORTHWEST BUFFER - TYPE LOW (SEC. 107.70)

- 10' min. width
- (2) Canopy Trees/100 LF
- (6) Understory Trees/100 LF
- (8) Shrubs/100 LF

Northwest Boundary:
 170 LF/100' = 1.7 X 3= 3.4 or 4 Canopy Trees
 170 LF/100' = 1.7 X 8= 15.2 or 11 Understory Trees
 170 LF/100' = 1.7 X 8= 15.2 or 11 Shrubs

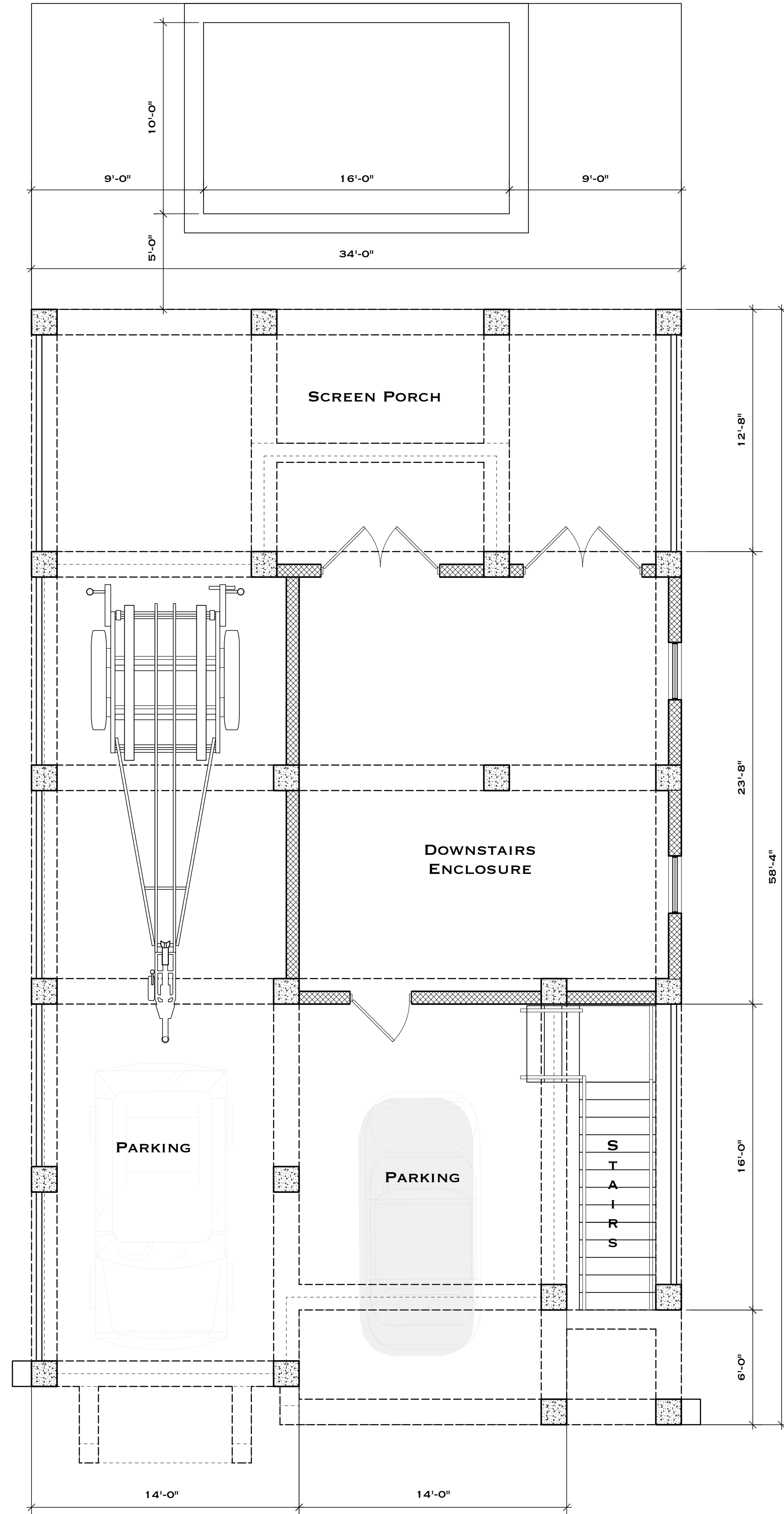
STREETSCAPE - TYPE 1 (SEC. 107.71)

- 10' min. width
- (2) Native Canopy Trees/100 LF w/ 2" DBH
- (4) Understory Trees/240 LF
- (1) Small Accent Tree/40 LF
- Continuous Hedge when parking NOT rear to building (3" HT w/ 2 Years)

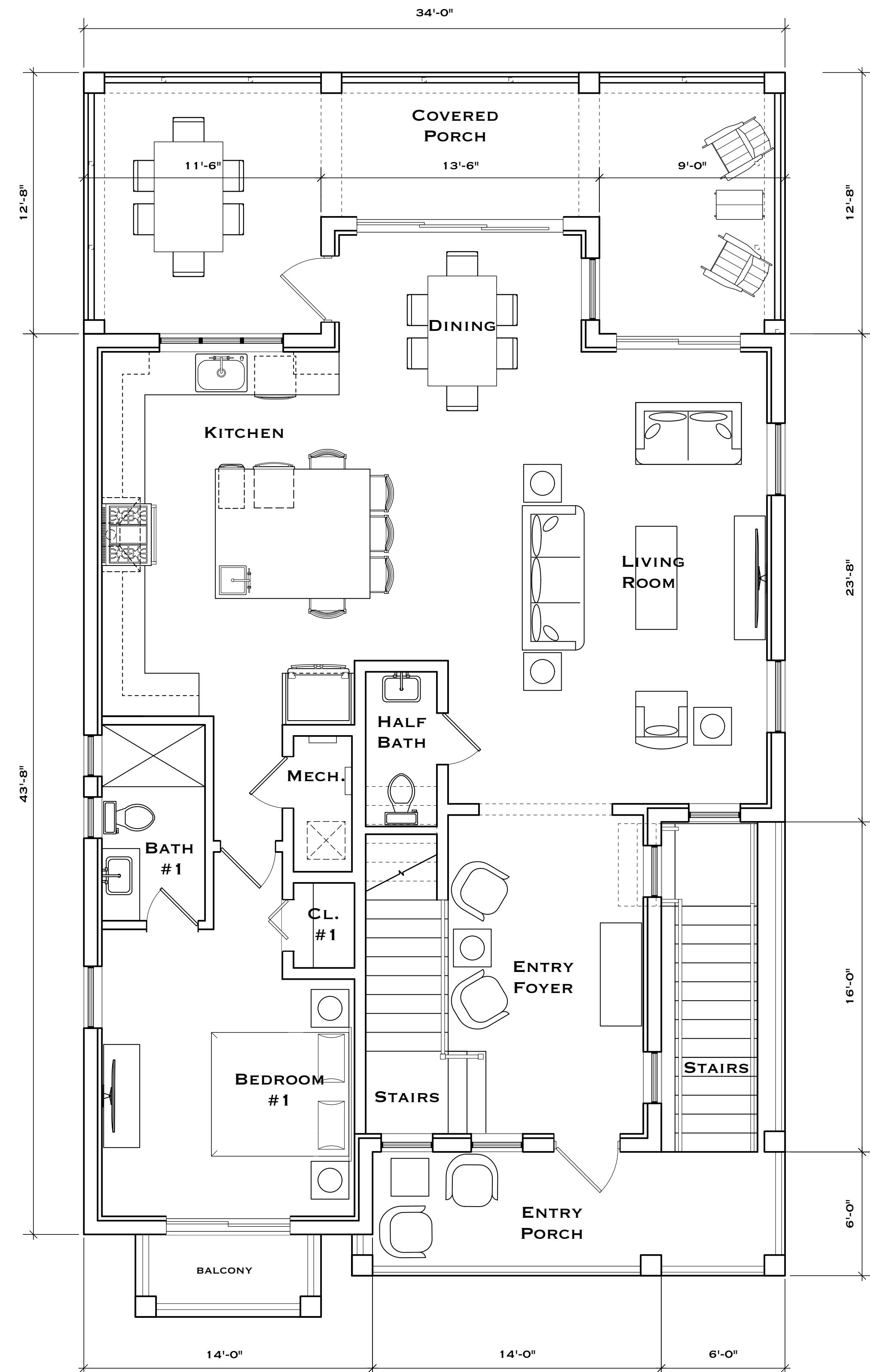
Footage:
 525 LF/100' = 5.25 X 2= 10.5 or 11 Native Canopy Trees
 525 LF/240' = 2.15 X 4= 8.75 or 9 Understory Trees
 525 LF/140' = 3.75 X 1= 3.75 or 4 Small Accent Trees

Note: See Landscape Plan for Buffering

SOUTHWEST BUFFER - N/A (SEC. 107.70)



1 GROUND FLOOR PLAN
A1.1 SCALE: 1/4" = 1'-0"



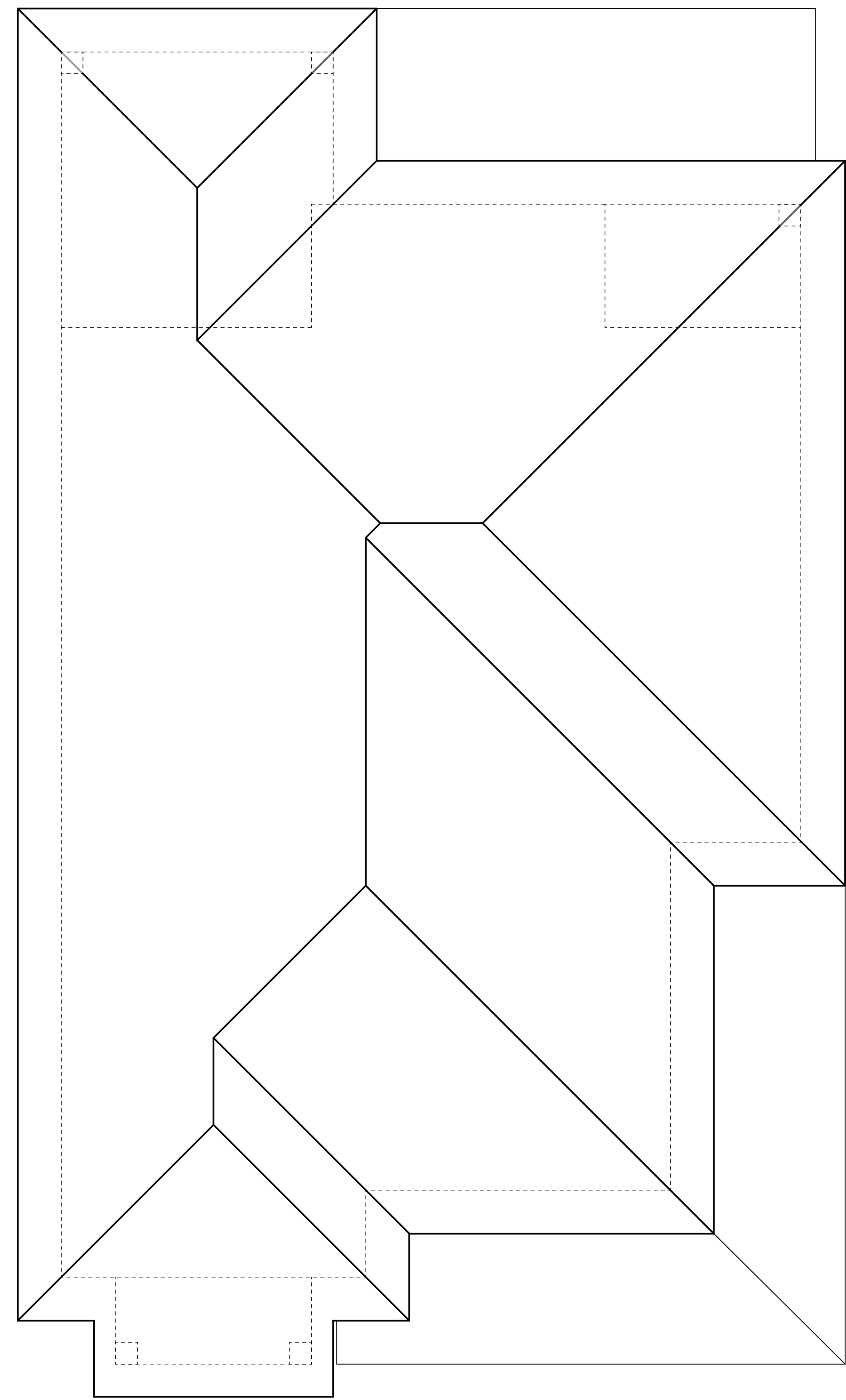
2 FIRST FLOOR PLAN
A1.1 SCALE: 1/4" = 1'-0"

REV.	DATE

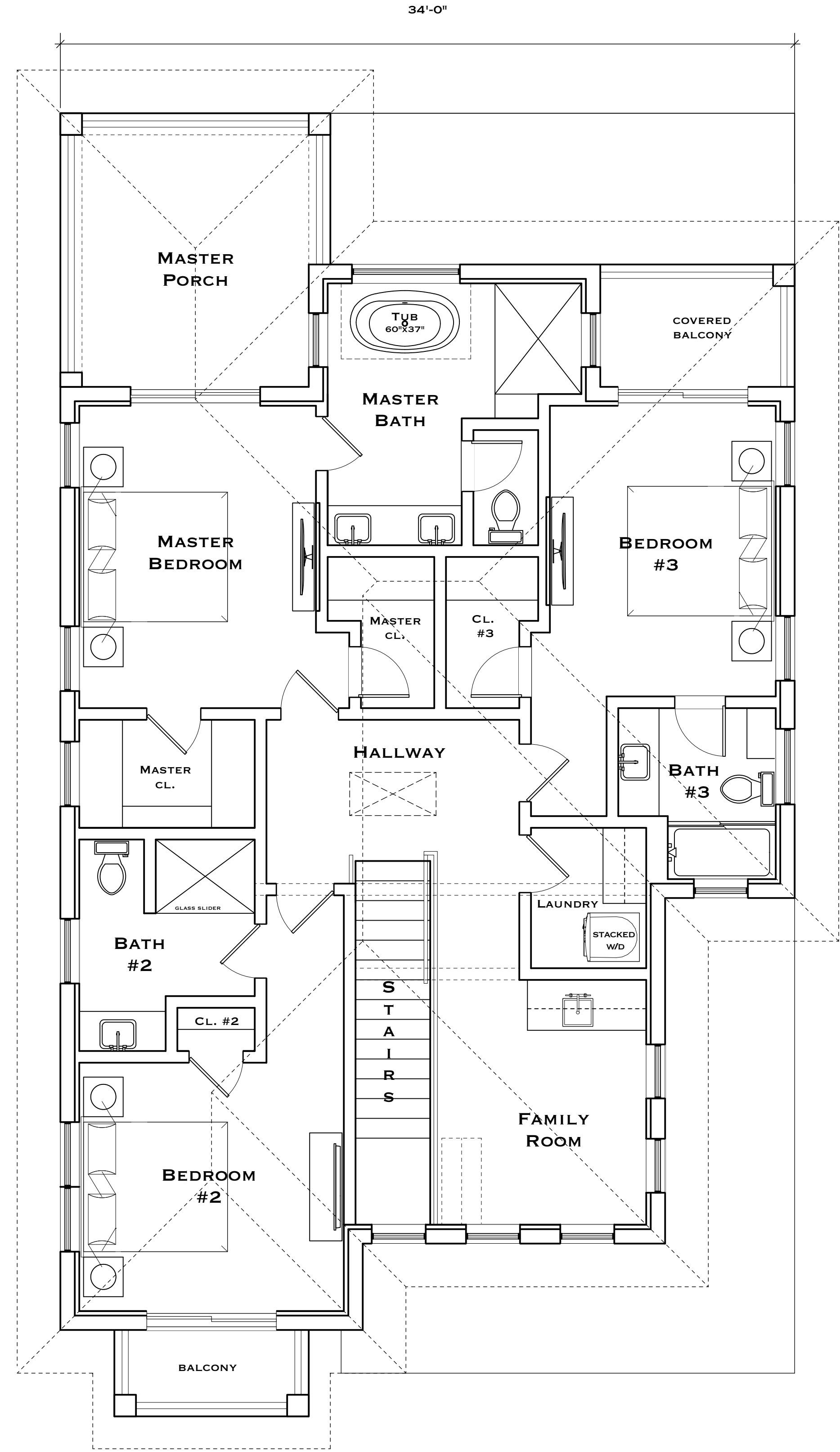
Rev.	-

REVISION #	DATE

A1.2
 SHEET #



1
ROOF PLAN
 SCALE: 1/4" = 1'-0"



2
SECOND FLOOR PLAN
 SCALE: 1/4" = 1'-0"

SCHEMATIC DESIGN DRAWINGS
 FOR REVIEW AND COMMENT ONLY

RENOVATION FOR
 12640 OVERSEAS HIGHWAY
 MARATHON, FL 33050

DRAWING TITLE:
 EXTERIOR ELEVATIONS

DRAWN: JS & TSN
CHECKED:
DATE: 10-23-2023

REV.	DATE

REVISION #	DATE

A3.1
 SHEET #



2
A3.1 SIDE ELEVATION
 SCALE: 1/4" = 1'-0"

SCHEMATIC DESIGN DRAWINGS
 FOR REVIEW AND COMMENT ONLY

RENOVATION FOR
 12640 OVERSEAS HIGHWAY
 MARATHON, FL 33050

DRAWING TITLE:
 EXTERIOR ELEVATIONS

DRAWN: JS & TSN
 CHECKED:
 DATE: 10-23-2023

REV.	

REVISION # DATE

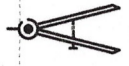
A3.2
 SHEET #



1 CREEK SIDE ELEVATION
 SCALE: 1/4" = 1'-0"



2 SIDE ELEVATION
 SCALE: 1/4" = 1'-0"



T.S. NEAL
ARCHITECTS INC.
 22974 OVERSEAS HWY
 CUNTERBURGH, FL
 33042
 305-340-8857
 851-422-9547

SCHMATZ
FOR REVIEW
COMMENT ONLY
DRAWINGS

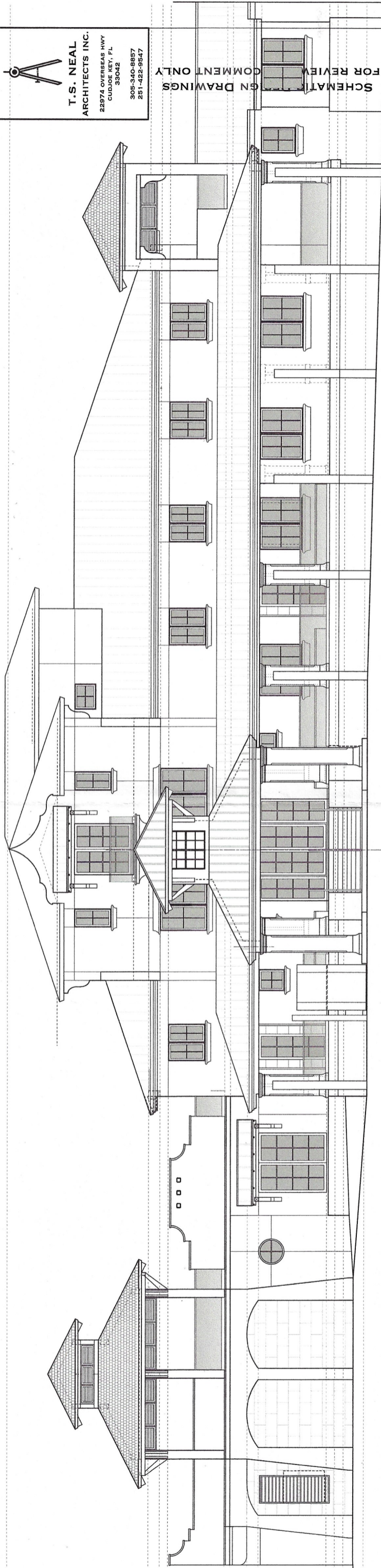
RENOVATION FOR
EXTERIOR ELEVATIONS
 DRAWING TITLE:
 DRAWN: TSN
 CHECKED: 10-11-2023
 DATE:

12640 OVERSEAS HIGHWAY
 MARATHON, FL 33050

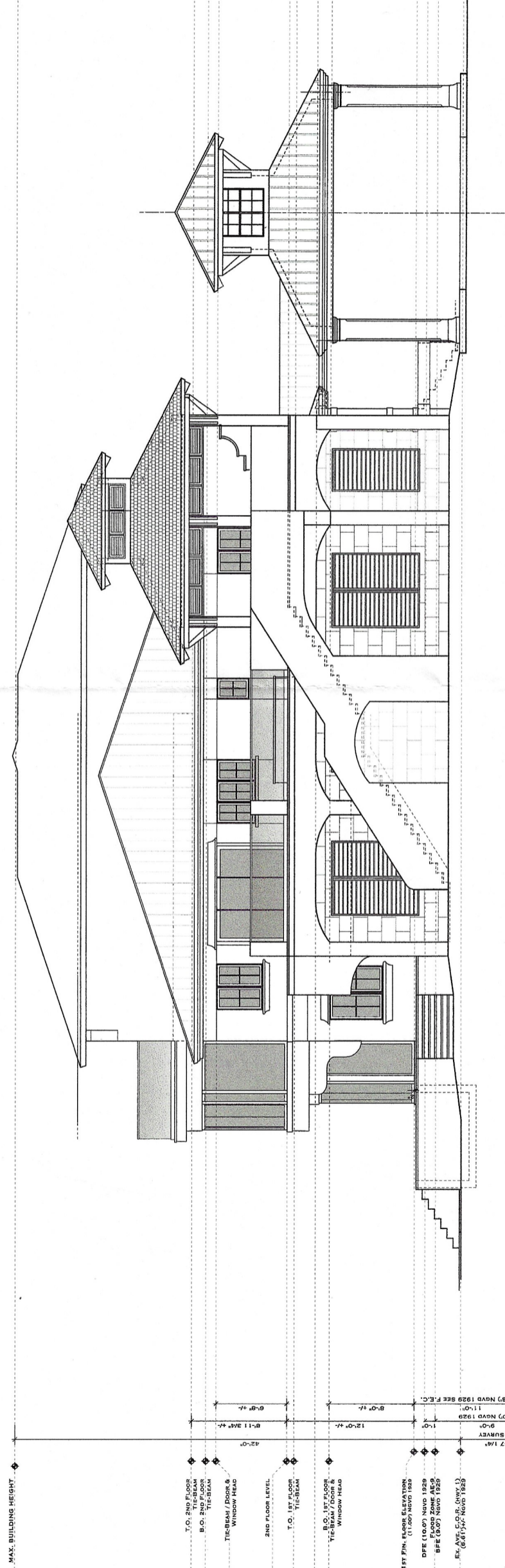
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A3.1		
SHEET #		

A
TSN
 TIMOTHY SETH NEAL ARCHITECTS, INC.

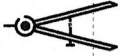
TIMOTHY SETH NEAL FLA. REGISTRATION # AR97505



1. STREET FRONT ELEVATION
 A3.1 SCALE: 3/16" = 1'-0"



2. SOUTH WEST SIDE ELEVATION
 A3.1 SCALE: 3/16" = 1'-0"



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ARCHITECTS INC.
 22974 OVERSEAS HWY
 CUDJOE KEY, FL
 33042
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 251-422-9547

FOR REVIEW AND COMMENT ONLY
SCHEMATIC DESIGN DRAWINGS

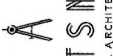
RENOVATION FOR
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 MARATHON, FL 33050

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 EXTERIOR ELEVATIONS

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CHECKED: TSN
DATE: 10-11-2023

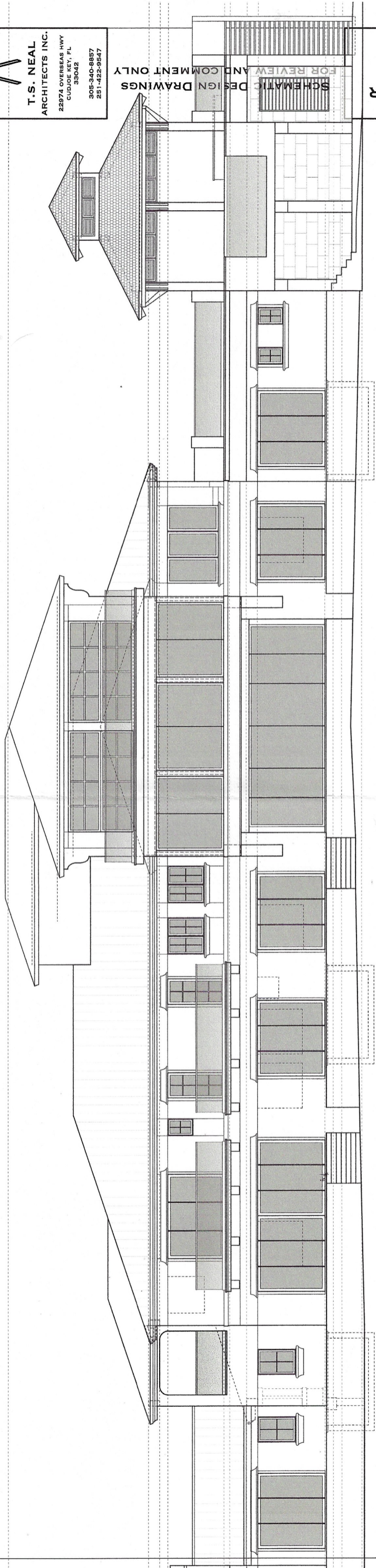
REV.	REVISION #	DATE

A3.2
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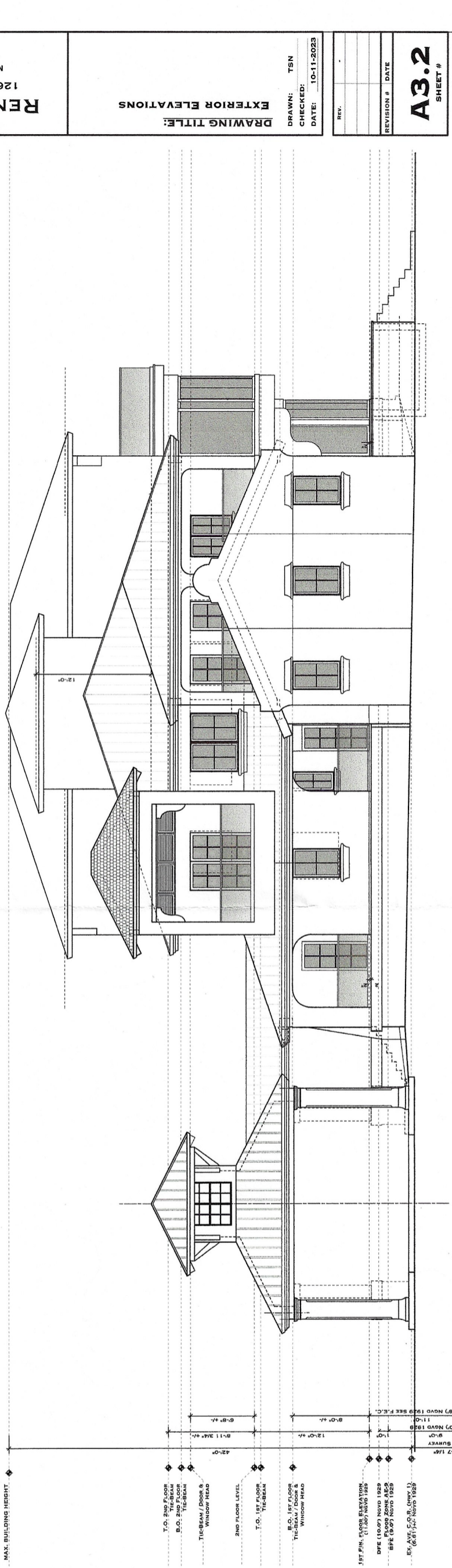


T. S. NEAL ARCHITECTS, INC.

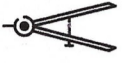
TIMOTHY SETH NEAL FLA. REGISTRATION # AR97505



1 WATER ELEVATION
A3.2 SCALE: 3/16" = 1'-0"



2 NORTHEAST SIDE ELEVATION
A3.2 SCALE: 3/16" = 1'-0"



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 22974 OVERSEAS HWY
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 33042
 305-340-9857
 251-422-9547

SCHEMATIC DESIGN DRAWINGS
 FOR REVIEW AND COMMENT ONLY

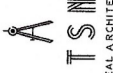
RENOVATION FOR
 12640 OVERSEAS HIGHWAY
 MARATHON, FL 33050

DRAWING TITLE:
 EXTERIOR ELEVATIONS

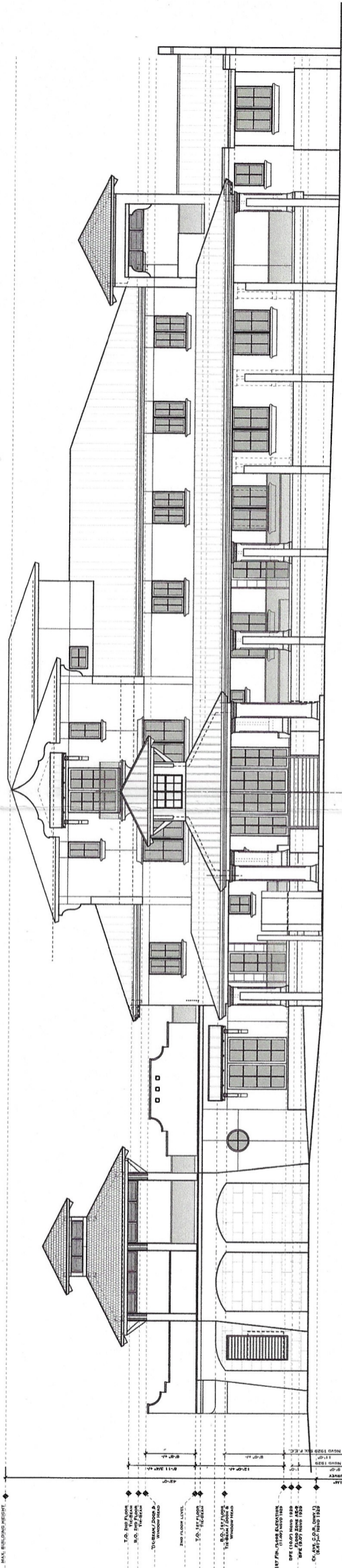
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CHECKED:
DATE: 10-11-2023

REV.	REVISION #	DATE

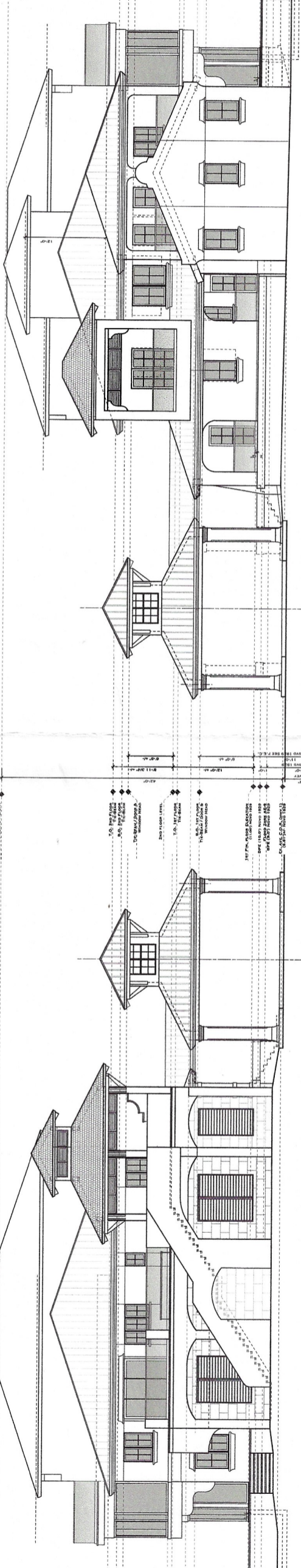
A3.3
 SHEET #



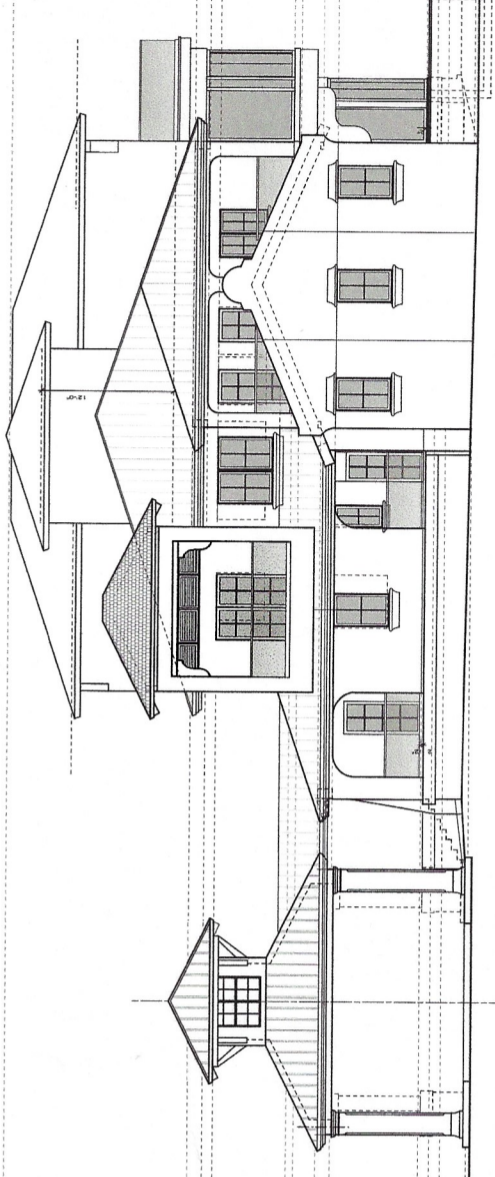
TIMOTHY SETH NEAL FLA. REGISTRATION # AR97505
 T.S. NEAL ARCHITECTS INC.



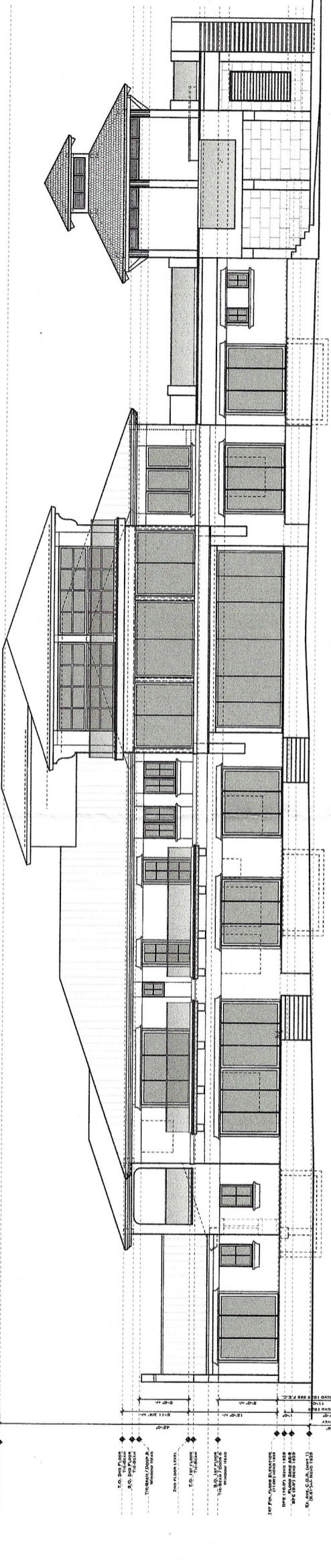
1 STREET FRONT ELEVATION
 A3.3 SCALE: 1/8" = 1'-0"



2 SOUTH WEST SIDE ELEVATION
 A3.3 SCALE: 1/8" = 1'-0"



3 NORTHEAST SIDE ELEVATION
 A3.3 SCALE: 1/8" = 1'-0"



4 WATER ELEVATION
 A3.3 SCALE: 1/8" = 1'-0"

PLANNING COMMISSION AGENDA STATEMENT



Meeting Date: February 26, 2024
To: Planning Commission
From: Brian Shea, Planning Director

Agenda Item: An Ordinance Of The City Of Marathon, Florida; Creating Chapter 107, Article 15, “Lighting”; Providing Criteria For Both Residential And Commercial Lighting Standards; Amending Chapter 110 Definitions; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The Department Of Commerce After Final Adoption By The City Council; And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL

APPLICANT: City of Marathon

REQUEST:

The proposed ordinance has been drafted to create standards for lighting for both commercial and residential by creating Article 15 “Lighting” under Chapter 107 of the LDRs.

Purpose of Proposed Amendment:

The purpose of the amendment is to expand upon existing commercial lighting standards while incorporating standards for residential lighting.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;
2. The consistency of the proposed amendment with the Comprehensive Plan; and
3. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:

1. Approved as proposed;
2. Approved with amendments proposed by the PC; or
3. Denied

Section 102.27. - Hearing(s) by Council.

A. The decision to process a text amendment is within the sole discretion of the Council.

B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

The City of Marathon has existing language as it pertains to lighting and the protection of sea turtles. Additionally lighting standards exist as they pertain to commercial parking lots. However, no standards exist as lighting relates to residential that is not within view of turtle nesting beaches.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

The proposed text amendment is consistent with the Comprehensive Plan and LDRs. This ordinance will aid in preventing adverse impacts of lighting on coastal resources, a requirement of Policy 4-1.3.1. It further affirms Policy 4-1.11.7 as it pertains to the protection of Sea Turtles.

C. Weather regulations change shall further the purposes of the LDRs and other City

Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by code consistency. It also provides clarity and visual examples of both acceptable and unacceptable lighting.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL

ARTICLE 107-15 OUTDOOR LIGHTING

[Sec 107.125 Definitions](#)

[Sec 107.126 Outdoor Lighting Generally](#)

[Sec 107.127 Interpretation](#)

Sec 107.125 Definitions

The following words, terms and phrases when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ambient light means light not originating from the site, such as moonlight.

Artificial light or *artificial lighting* means the light emanating from any manmade device. "Bug" type bulb means any yellow light bulb specifically designed to reduce the attraction of insects to the light.

Cumulatively illuminated means illuminated by numerous artificial light sources.

Direct light means light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Fixture means the assembly that houses the lamp or lamps and can include all or some of the following parts: A housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

Flood or spot light means any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam.

Full cutoff fixture means a luminaire that does not emit any light, either directly or by reflection or diffusion, above a horizontal plane running through the lowest part of the luminaire's feature containing the lamp or lamps that produces the actual light, including any attached reflectors or diffusers.

Glare means light emitting from a luminaire that interferes with visibility.

Ground-level barrier means any vegetation, natural feature or artificial structure rising from the ground which prevents lighting from shining directly onto other properties.

Hatchling means any species of marine turtle, within or outside of a nest, that has recently hatched from an egg.

Indirect light means direct light that has been reflected or has scattered off of other surfaces.

Lamp means the component of a luminaire that produces the actual light.

Landscaping lighting means lighting used to emphasize or draw attention to a landscape feature.

Light trespass means light from an artificial light source that is intruding into an area where it does not belong, such as an adjoining or nearby property, or the beach.

Luminaire means a complete lighting system, including a lamp or lamps and a fixture.

Marine turtle means any marine-dwelling reptile of the families Cheloniidae or Dermochelyidae found in state waters or using the beach as nesting habitat, including the species: *Caretta caretta* (loggerhead), *Chelonia mydas* (green), *Dermochelys coriacea* (leatherback), *Eretmochelys imbricata* (hawksbill), and *Lepidochelys kemp* (Kemp's ridley).

Marine turtle nesting season means the period from April 15 through October 31 of each year.

Nest means an area where marine turtle eggs have been naturally deposited or subsequently relocated.

Outdoor lighting means the nighttime illumination of an outside area or object by any fixed luminaire. Vehicle lights and flashlights are not included in this definition.

Pathway lighting means lighting used to illuminate a walkway or pathway.

Point source of light means any artificial light or lighting that directly radiates visible light.

Pole-mounted lighting means any luminaire set on a base or a pole which raises the source of light off of the ground.

Recessed luminaire means a luminaire recessed into an outdoor ceiling or canopy so that its bottom is flush with the underside of the structure.

Skyglow means illumination of the sky from artificial sources.

Tinted glass means any glass treated to achieve an industry-approved, inside-to-outside light transmittance value of 45 percent or less. Such transmittance is limited to the visible spectrum (400 to 700 nanometers) and is measured as the percentage of light that is transmitted through the glass.

Unshielded lighting means any artificial light emitted, either directly or by reflection or diffusion, above a horizontal plane running through the lowest part of the luminaire's full cutoff feature. See [Appendix A](#).

Uplighting means any luminaire that directly or indirectly projects light above the horizontal plane of a 90-degree angle passing through the lowest point of the luminaire's full cutoff feature.

Wallpacks means luminaires placed along the outer walls of buildings.

Sec 107.126 Outdoor Lighting Generally

- (a) Purpose and intent. The purpose of this section is to set outdoor lighting standards that will minimize glare, light trespass, and skyglow; conserve energy while maintaining nighttime safety, security, and productivity; protect the privacy of residents; minimize disturbance of wildlife; enhance the ambiance of the community; and ensure optimal viewing of night skies.

It is the intent of this section that all luminaires in the city be brought into compliance with the standards of this section in accordance with the timetable established in subsection (d).

To encourage the replacement of nonconforming outdoor lights, the issuance of a development permit, solely for outdoor lights, does not trigger compliance with code requirements unrelated to outdoor lighting.

Further, the issuance of a development permit for any purpose other than outdoor lighting will not require the replacement or removal of existing nonconforming outdoor lighting as a condition of authorizing such development permit, except in accordance with the timetable in subsection (d).

- (b) Applicability. New or replacement luminaires and new construction must comply with the standards of Section 107.126(b). Existing luminaires shall comply with the timetable in Section 107.126(d).
- (1) All land uses. A development permit is required to add or replace outdoor lights.
 - (2) All exterior lighting shall be designed and installed to prevent glare and light trespass. Light shall not be allowed to cause glare affecting motorists, bicyclists, or other users of roads, driveways, and bicycle paths. Light shall not trespass over property lines.
 - (3) Full cutoff fixtures must be used. All outdoor lighting, including display, sign, building, parking lot, and aesthetic lighting, must use full cutoff fixtures, which shine light downward.
 - (4) Functional equivalents allowed. Lights that are properly installed within or under an architectural space or feature (such as under a porch roof or a roof overhang) shall be considered a functional equivalent to a full cutoff fixture and need not use full cutoff fixtures.
 - (5) The illustrations contained in [Appendix A](#) to this section are intended to provide examples of fixtures that comply and that do not comply with these standards and are part of these regulations.
 - (6) Mercury vapor lighting is prohibited. High- or low-pressure sodium lighting or other energy efficient and less environmentally hazardous types of lighting are permitted and encouraged. The City Council may approve, by resolution, new lighting technologies as they become available.
 - (7) In residential settings, motion-detecting security lighting is permitted and encouraged in order to maximize safety, minimize overall illumination, and conserve energy.
 - (8) Unshielded pole-mounted lighting is prohibited.
 - (9) Uplighting is prohibited.

- (10) All commercial parking lot lighting shall also comply with the provisions of Section 107.54.
- (c) Exemptions. The following are exempt from the requirements of this section:
- (1) All temporary emergency lighting needed by the police or fire departments or other emergency services, as well as all vehicular luminaires.
 - (2) Lighting for public streets, roads, and rights-of-way.
 - (3) All hazard warning luminaires required by federal or state regulatory agencies are exempt from the requirements of this subsection. Unless otherwise mandated, all luminaires used must be yellow/amber and must be shown to be as close as possible to the federally or state required minimum lumen output requirement for the specific task.
- (d) Existing nonconforming luminaires.
- (1) Any lawfully existing luminaire, with the exception of unshielded pole lighting (except as described in subsection (d)(4) below) and uplighting, that currently exists at the time of this division that is not in conformance with the standards set forth in Section 107.126(b) shall be permitted to remain until such time as they are either replaced or relocated. Lights that are properly installed within or under an architectural space or feature (such as a porch roof, roof overhang, eave or similar architectural feature) shall be permitted to remain until such time as they are either replaced or relocated (and such lights shall not be considered uplighting even where such architectural feature is not the functional equivalent of a full cutoff feature).
 - (2) Any luminaire that replaces a lawfully existing luminaire, or any lawfully existing luminaire that is moved, must meet the standards of Section 107.126(b) at the time of its replacement or relocation.
 - (3) All lawfully existing unshielded pole-mounted lighting (except as described in subsection (d)(4) below), and uplighting shall be strictly prohibited.
 - (4) Notwithstanding the above provisions of this section, a pole light where the fixture has an opaque cover, cap or top constructed as part of the fixture assembly shall be permitted to remain until such time as it is replaced or relocated.
- (e) Prohibition of luminaires causing glare to motorists, cyclists, and adjacent properties. Notwithstanding any other provision of this division of the Code, all luminaires that direct light toward streets, shared use paths or parking lots that cause glare to motorists or cyclists, or that direct light towards adjacent properties that cause glare to the occupants of such properties, shall be either shielded or redirected so that the luminaires do not continue to cause a potential hazard.

Sec 107.128 Interpretation

- (a) Where any of the provisions of this section appear to be in conflict with state laws preempting local authority, they shall not take effect until such time as the preemption is withdrawn.
- (b) Where any of the provisions appear to be in conflict with another provision of this division or another provision of this Land Development Regulations, the provision providing the greatest protection against glare, light trespass and sky glow shall apply.

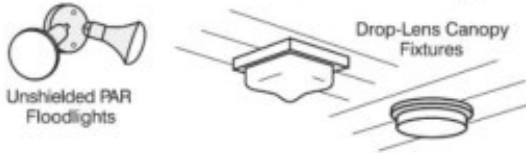
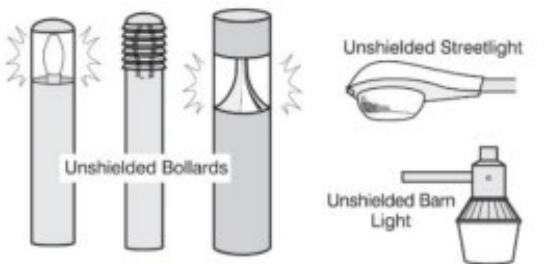
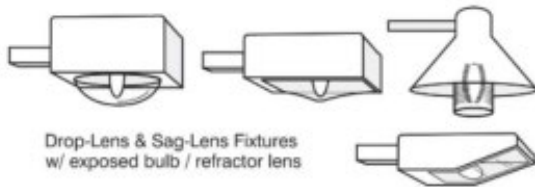
Appendix A Examples of Acceptable / Unacceptable Lighting Fixtures

APPENDIX A

Examples of Acceptable / Unacceptable Lighting Fixtures

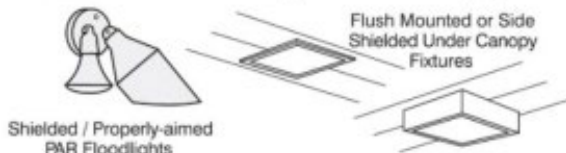
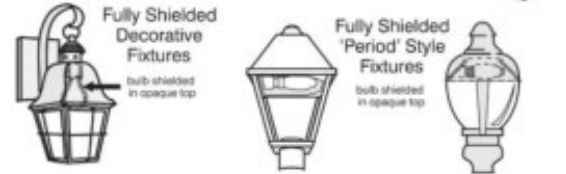
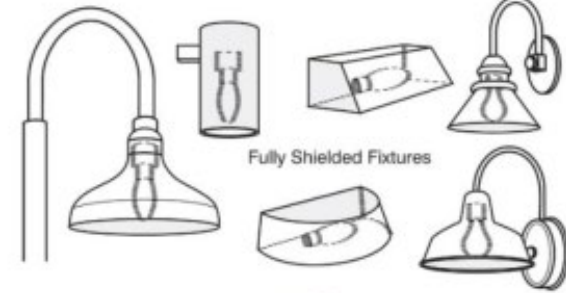
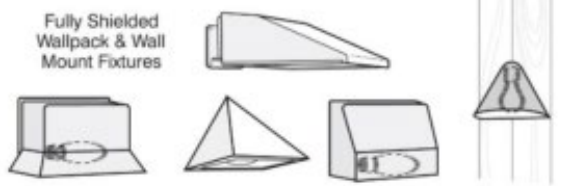
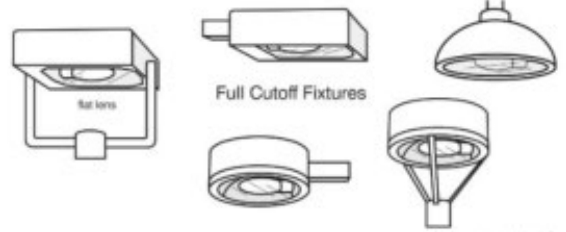
Unacceptable / Discouraged

Fixtures that produce glare and light trespass



Acceptable

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night



Illustrations by Bob Crelin © 2005. Rendered for the Town of Southampton, NY. Used with permission.

Sponsored By:
City Council Public Hearing Date: XXXXX, 2024
XX, 2024
Enactment Date: XXXXXX XX, 2024

**CITY OF MARATHON, FLORIDA
ORDINANCE 2024-XX**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA; CREATING CHAPTER 107, ARTICLE 15, “LIGHTING”; PROVIDING CRITERIA FOR BOTH RESIDENTIAL AND COMMERCIAL LIGHTING STANDARDS; AMENDING CHAPTER 110 DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE DEPARTMENT OF COMMERCE AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, *Florida Statutes*, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City of Marathon is located within an Area of Critical State Concern, pursuant to Sections 380.05 and 380.0552, *Florida Statutes*; and

WHEREAS, Florida Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, *Florida Statutes*, which have been approved by the State, as required by law; and

WHEREAS, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, *Florida Statutes*; and

WHEREAS, it is the intent of the City Council to have consistent lighting regulations for both residential and commercial uses; and

WHEREAS, The City Council intends to adopt the language and further the policies of the Comprehensive Plan.

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

~~Strikethrough~~ = deletion **Bold underline** = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Chapter 107, Article 15, entitled “Lighting” is hereby adopted as attached in Exhibit A.

SECTION 3. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 6. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
THIS XX DAY OF XXXX, 2024.**

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven Williams, City Attorney



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: February 26, 2024
To: Planning Commission
From: George Garrett, City Manager
Through: Brian Shea, Planning Director

Agenda Item: An Ordinance Of The City Of Marathon, Florida, Amending Chapter 103 “Zoning Districts,” Article 3 “Use And Intensity Tables”, “Standards,” 103.15 “Standards”, And Chapter 110, “Definitions,” Article 3, “Defined Terms;” Modifying Accessory Structures And Accessory Uses; Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; Providing For Inclusion In The Code Of Ordinances, City Of Marathon, Florida; And Providing An Effective Date.

RECOMMENDATION:

City Manager recommends APPROVAL.

BACKGROUND AND REQUEST:

The City Manager presents this item in order to provide some flexibility in how the terms “Accessory Structure and Use” are utilized in the context of approving development in common ownership on two contiguous or adjacent properties within the City of Marathon.

The proposed Ordinance

APPLICANT: City of Marathon

REQUEST: The ordinance amends chapter 103, article 3, “Use and Intensity Tables,” and Chapter 110, Article 3, “Defined Terms,” concerning the terms Accessory Structure and Accessory Use.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;
2. The consistency of the proposed amendment with the Comprehensive Plan; and

3. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.
- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
1. Approved as proposed;
 2. Approved with amendments proposed by the PC; or
 3. Denied

Section 102.27. - Hearing(s) by Council.

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

Approval of accessory structures and their respective uses and the requirement that those structures and use be associated with a principal structure and/or use is reasonable. Such requirement helps sanctity and security of neighborhoods on the premise that there will be a responsible party occupying the principal structure, whether commercial or residential.

Not implicit in the City's Code of Ordinances is a policy that the City requires the consolidation of adjacent parcels in common ownership when the owner wishes to place an accessory structure on the adjacent parcel to a property with a principal structure and/or use. This policy helps the City ensure that the standard is met, but is not an essential for enforcement of other standards of either the Land Development Regulations or other elements of the City Code of Ordinances

B. The consistency of the proposed amendment with the Comprehensive Plan; and

The proposal of this Ordinance modification creates no inconsistency with any Goal, Objective, or Policy within the City's Comprehensive Plan.

C. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by code consistency.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

City Manager and staff recommend APPROVAL.

Sec 103.15 Standards

1. *Uses.* Certain uses, whether permitted as of right, limited, accessory or conditional uses may affect adjacent properties, the neighborhood, or community, even if the site planning and development standards of the applicable zoning district are satisfied. Uses in bold on Table 103.15.1 have special criteria contained in [Article 1 of Chapter 104](#) "Specific Use Regulations", which are intended to mitigate potential problems and hazards, and to ensure consistency with the Plan.
2. *Zoning Districts.* The density, intensity, setbacks, and dimensional standards relative to each parcel are subject to the limitations of the zoning district as reflected in Tables 103.15.1 and 103.15.2.

Table 103.15.1

Uses by Zoning District

*Permitted uses are limited to those which are related to the maritime industry
**Submerged Mooring Facilities may only be permitted in association with upland areas whose zoning is shown as having a "C"

***Existing Single-Family Residences may be repaired, modified, or replaced. Individual vacant Lots within Blocks defined within the Plat subject to RL-C zoning may be built upon IF the sum of all Lots within an individual Block are over 90 percent developed with single family residences as of the date that DEO accepts the Ordinance.

**** Limited to Florida Registered Beekeepers with the Florida Department of Agriculture and Consumer Services (FDACS).

***** In the event that an accessory structure and associated use is located or proposed to be located on one of two adjacent or contiguous properties in common ownership one of which contains a principal structure and use, the other of which contains or will contain the accessory structure and use, the two properties do not need to be combined into one property. However, should the ownership of the two properties be divided into two different ownerships, the accessory structure and use shall cease, and any accessory structures shall be demolished until such time that a principal structure is approved and placed on the property.

Note: Uses may be subject to additional requirements, see [Chapter 104](#), Specific Use Regulations.

ARTICLE 110-3 DEFINED TERMS

Accessory structure (Appurtenant structure). A structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal

structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, and storage sheds. In the event that an accessory structure and associated use is located or proposed to be located on one of two adjacent or contiguous properties in common ownership one of which contains a principal structure and use, the other of which contains or will contain the accessory structure and use, the two properties do not need to be combined into one property. However, should the ownership of the two properties be divided into two different ownerships, the accessory structure and use shall cease, and any accessory structures shall be demolished until such time that a principal structure is approved and placed on the property.

Use, Accessory. Activities established as secondary, in support of, and dependent upon the principal use. In the event that an accessory structure and associated use is located or proposed to be located on one of two adjacent or contiguous properties in common ownership one of which contains a principal structure and use, the other of which contains or will contain the accessory structure and use, the two properties do not need to be combined into one property. However, should the ownership of the two properties be divided into two different ownerships, the accessory structure and use shall cease, and any accessory structures shall be demolished until such time that a principal structure is approved and placed on the property.

Sponsored by: Garrett
Introduction Date: February 26, 2024
Public Hearing Dates: February 26, 2024
March 12, 2024
April 9, 2024
Enactment date: tbd, 2024

**CITY OF MARATHON, FLORIDA
ORDINANCE 2024-XXX**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 103 “ZONING DISTRICTS,” ARTICLE 3 “USE AND INTENSITY TABLES,” “STANDARDS,” 103.15 “STANDARDS”, AND CHAPTER 110, “DEFINITIONS,” ARTICLE 3, “DEFINED TERMS;” MODIFYING ACCESSORY STRUCTURES AND ACCESSORY USES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES, CITY OF MARATHON, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs;” and

WHEREAS, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

WHEREAS, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting business regulations for the protection of the public; and

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

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Amend the Land Development Regulations, Chapter 104, Section 104.25 “Hotels or Motels” as shown in Exhibit A

SECTION 3. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. The provisions of this Ordinance constitute a “land development regulation” as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 6. This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9th DAY OF APRIL, 2024.

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven Williams, City Attorney

DRAFT

Exhibit "A"

DRAFT



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: February 26, 2024
To: Planning Commission
From: Brian Shea, Planning Director

Agenda Item: An Ordinance By The City Of Marathon, Florida, Amending Chapter 101, Article 3 (“Planning Commission”) By Amending Section 101.04 Titled “General” To Delete A Portion Regarding A Mailing List; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL

BACKGROUND:

APPLICANT: City of Marathon

REQUEST:

The draft ordinance has been proposed to delete language in Chapter 101, Article 3, Section 101.04 of the Marathon Code of Ordinances as it pertains to maintaining a mailing list of persons wishing to receive notices of meetings, agendas or minutes and who have paid an annual fee set by Council to cover copying and mailing costs.

Purpose of Proposed Amendment:

The purpose of the amendment is to remove language regarding a process that does not exist and is moot since notices, agendas and minutes are posted on the City of Marathon’s website.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;

2. The consistency of the proposed amendment with the Comprehensive Plan; and
 3. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.
- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
1. Approved as proposed;
 2. Approved with amendments proposed by the PC; or
 3. Denied

Section 102.27. - Hearing(s) by Council.

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criterion and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

The existing language as written is moot since a mailing list is not kept, the listed documents are found online and the requirement that an annual fee be set by the Council has not been met. In order to clarify and remove unnecessary language, the section needs to delete the language outlining same.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Policy 9-1.1.2 titled Citizen Participation, and portion of the policy that public hearings shall be duly noticed. The removal of the moot language and procedure is still consistent with the notice requirements in the LDRs and Florida Statutes.

C. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by ensuring that the language found in the LDRs reflect the practices of the City.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL

Sponsored By:
City Council Public Hearing Date: XXXXX, 2024
XX, 2024
Enactment Date: XXXXXX XX, 2024

**CITY OF MARATHON, FLORIDA
ORDINANCE 2024-XX**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 101, ARTICLE 3 (“PLANNING COMMISSION”) BY AMENDING SECTION 101.04 TITLED “GENERAL” TO DELETE A PORTION REGARDING A MAILING LIST; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMERCE AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, *Florida Statutes*, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City of Marathon is located within an Area of Critical State Concern, pursuant to Sections 380.05 and 380.0552, *Florida Statutes*; and

WHEREAS, Florida Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, *Florida Statutes*, which have been approved by the State, as required by law; and

WHEREAS, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, *Florida Statutes*; and

WHEREAS, Chapter 101, Article 3, Section 101.04 of the Marathon Code of Ordinances contains a provision for the recording secretary for the Planning Commission to keep of a mailing list of persons wishing to receive notices of meetings, agendas or minutes who have paid an annual fee; and

WHEREAS, such a mailing list of persons does not exist and is moot since notices, agendas and minutes are posted on the City of Marathon’s website.

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

~~Strikethrough~~ = deletion

Bold underline = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Sec. 101.04 “General” is hereby amended to read as follows:

Sec 101.04 General

- A. *Number of Members.* The PC shall be comprised of five (5) voting members.
- B. *Appointment.* Each member of the City Council, at his or her discretion, shall appoint one (1) member of the Planning Commission to a term running concurrently with the appointing City Council Member's term. Where required by state statute, by majority vote, the Council may appoint a representative of the Monroe County School Board to serve in an advisory capacity as a nonvoting member of the Planning Commission.
- C. *Terms, Chair and Vice-Chair.*
 - 1. At an annual organizational meeting, the members of the Planning Commission shall elect one of their members as chair and one as vice-chair. In the absence of the chair, the vice-chair shall act as the chair and shall have all the powers of the chair. The chair shall serve a term of one (1) year. No member shall serve as chair for more than two (2) consecutive terms unless the PC votes by super-majority four-fifths (4/5) votes to approve reappointment for additional consecutive terms.
 - 2. The chair (or vice-chair acting in the capacity of chair) shall serve as the presiding officer of any meeting of the Planning Commission. The presiding officer or designee shall be in charge of all proceedings before the Planning Commission and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Planning Commission. In the event that the chair or vice-chair is unavailable, the voting members of the Planning Commission who are present shall by majority vote select a voting member to act as presiding officer for the meeting in question.
- D. *Removal.* A member of the Planning Commission may be removed from the Planning Commission by vote of a majority of those members of the City Council present at the time of the removal vote, or as otherwise allowed by law.
- E. *Vacancies.* If any voting member of the Planning Commission shall fail to attend three (3) regular meetings of the Planning Commission within a three-month period, the voting member's appointment shall automatically be revoked. Thereafter, the Council shall fill the vacancy as soon as practicable in accordance with this section.
- F. *Recording Secretary.* The City Manager shall appoint a recording secretary to serve the Planning Commission. The secretary shall keep minutes of all proceedings, which minutes shall be a summary of all proceedings before the Planning Commission attested to by the secretary, and which shall include the vote of each member upon every question. The minutes shall be approved by a majority of the members voting. In addition, the secretary shall maintain all records of meetings, hearings and proceedings, **and** the correspondence of the Planning Commission, ~~and a mailing list of persons wishing to receive notices of meetings, agendas or minutes and who have paid an annual fee set by the Council to cover copying and mailing costs.~~
- G. *Staff.* The City Manager or designee shall appoint or assign such staff as may be necessary for the Planning Commission to conduct its business.

SECTION 3. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 6. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
THIS XX DAY OF XXXX, 2024.**

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven Williams, City Attorney



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: February 26, 2024

To: Planning Commission

From: Brian Shea, Planning Director

Agenda Item: An Ordinance By The City Of Marathon, Florida, Amending Chapter 104, Article 1 (“General Provisions”) By Deleting A Portion Of Section 104.66 Titled “Wireless Services Facilities (“WSFs”)”; Specifically, Subsection G Part 4 To Comport With Modern Constitutional Constraints; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL

BACKGROUND:

APPLICANT: City of Marathon

REQUEST:

The draft ordinance has been proposed to modify language in Chapters 104, Article 1, of the City of Marathon Land Development Regulations, as they pertain to signage.

Purpose of Proposed Amendment:

The purpose of the amendment is to strike the language that is outdated and rely on the constitutionally complaint sign language that has already been amended.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;
2. The consistency of the proposed amendment with the Comprehensive Plan; and

3. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.
- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
1. Approved as proposed;
 2. Approved with amendments proposed by the PC; or
 3. Denied

Section 102.27. - Hearing(s) by Council.

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criterion and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

On June 15, 2015, the Supreme Court decided the case of *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), which set a new constitutional standard for which a municipal sign ordinance could and could not regulate. Because of the regulations imposed by the Supreme Court, the current iteration of the City of Marathon’s Code of Ordinance Chapter 104, Section 104.66(G)(4) has become outdated and in need of being updated.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Policy 7-1.4.2 states that the City shall continue to maintain Land Development Regulations, which include provisions to minimize the impacts of signs on the scenic beauty of the City. This amendment ensures the LDRs are maintained and constitutionally valid.

C. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by ensuring constitutional validity.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL

Sponsored By:
City Council Public Hearing Date: XXXXX, 2024
XX, 2024
Enactment Date: XXXXXX XX, 2024

**CITY OF MARATHON, FLORIDA
ORDINANCE 2024-XX**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 104, ARTICLE 1 (“GENERAL PROVISIONS”) BY DELETING A PORTION OF SECTION 104.66 TITLED “WIRELESS SERVICES FACILITIES (“WSFs”)”; SPECIFICALLY, SUBSECTION G PART 3 TO COMPORT WITH MODERN CONSTITUTIONAL CONSTRAINTS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMERCE AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, *Florida Statutes*, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City of Marathon is located within an Area of Critical State Concern, pursuant to Sections 380.05 and 380.0552, *Florida Statutes*; and

WHEREAS, Florida Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, *Florida Statutes*, which have been approved by the State, as required by law; and

WHEREAS, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, *Florida Statutes*, and

WHEREAS, on June 15, 2015, the Supreme Court decided the case of *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), which set a new constitutional standard for which a municipal sign ordinance could and could not regulate; and

WHEREAS, because of the regulations imposed by the Supreme Court, the current iteration of the City of Marathon’s Code of Ordinance Chapter 104, Section 104.66(G)(3) has become outdated and in need of being updated.

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

~~Strikethrough~~ = deletion

Bold underline = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. “Wireless Services Facilities (“WSFs”)” is hereby amended to read as follows:

[Sec 104.66] Wireless Services Facilities ("WSFs")

Wireless Services facilities may be allowed pursuant to Table 103.15, subject to the following conditions:

- A. *Purpose and Intent.* The purpose and intent of this section is to:
1. Regulate the placement, construction and modification of new Wireless Communications Towers and Facilities without unreasonably discriminating among providers of functionally equivalent personal wireless services or prohibiting personal wireless services in the City;
 2. Encourage the Collocation of Antennas, Ancillary Structures and associated Equipment Enclosures on existing Wireless Communications Towers in order to minimize the visual, aesthetic, public safety, natural environment and wildlife impacts of new Towers, and to reduce the need for additional Towers within the City;
 3. Encourage the placement of Antennas, Ancillary Structures and Equipment Enclosures on existing buildings in order to minimize the visual, aesthetic, public safety, natural environment and wildlife impacts of new Towers, and to reduce the need for additional Towers within the City;
 4. Encourage the Replacement of existing Wireless Communications Facilities through the use of Collocation; and
 5. Minimize the visual, environmental and safety impacts of new Wireless Communications Facilities to the City by establishing standards for their location and structural integrity, in light of the location of the City within a high velocity hurricane zone to ensure compatibility with surrounding land uses and preservation of the City's community character.
- B. *Applicability.* This chapter shall apply to the installation, construction, or modification of the following Wireless Communications Facilities:
1. Existing Towers;
 2. Proposed Towers;
 3. Replacement of Existing Towers;
 4. Collocation;
 5. Attached Wireless Communications facilities;
 6. Stealth Wireless Communications facilities; and
 7. Satellite Earth Stations;
- C. *Exemptions.* The following items are exempt from the provisions of this section:
1. Amateur radio Antennas as provided by federal law;
 2. The installation of satellite television or microwave receiving Antennas that do not exceed 40 inches in diameter provided that the Antenna is attached to a building used for a residential or commercial use or placed no more than 24 inches above finished grade;
 3. Routine maintenance for any existing Wireless Communications facility;
 4. The substitution or change of existing Antennas or other equipment on an Existing Tower provided the substituted Antennas or equipment does not diminish the structural capacity of the Tower, and provided such change does not increase the overall height of the structure; and
 5. City-owned towers.

D. *Specification of Land Use Classifications.* The placement of Wireless Communications Facilities shall be in accordance with Table 103.15.1 of the LDRs.

E. *Concept Meeting.*

1. A concept meeting is required for any proposed Tower, Replacement Tower, Stealth Wireless Communications Facility, or Satellite Earth Station.
2. At the time a concept meeting is held, the applicant shall demonstrate that the following notice was mailed (via certified mail) to all interested parties, including other Wireless Communications Service Providers licensed to provide service within Monroe County as indicated on the list of wireless service providers and interested parties provided by the City of Marathon Planning Department (the "Planning Department"):

"Pursuant to the requirements of the City of Marathon Land Development Regulations, (name of provider) is hereby providing you with notice of our intent to meet with the Planning Department in a concept meeting to discuss the location of a Wireless Communications Facility that would be located at _____ (location) _____. In general, we plan to construct a support structure of _____ feet in height for the purpose of providing _____ (type of wireless service) _____. Please inform us and the Planning Department if you have any desire for placing additional wireless facilities or equipment within _____ miles of our proposed facility. Please provide us with this information within ten (10) business days' after the date of this letter. Your cooperation is sincerely appreciated.

Sincerely, _____ (pre-application applicant, wireless provider)" _____;

3. Pursuant to all items agreed upon during the Concept Meeting, including, but not limited to, the exact amount of additional providers to be accommodated on the proposed Wireless Communications Facility, shall be recorded in the letter of understanding resulting from the conference; and
4. The City Manager or designee shall determine during the concept meeting the specific location(s) from which photo-simulated post construction renderings of the proposed Wireless Communications Facility shall be submitted with the application for a development permit from the City.

F. *Development Standards.* The following minimum standards shall apply to Wireless Communications facilities:

1. *Basic submittal requirements for all Wireless Communication Facilities.*

- a. A completed application form and any appropriate application fees.
- b. Three (3) sets of signed and sealed site plans indicating all new proposed structures.
- c. A property card for the subject property from the Monroe County Property Appraiser's Office or a Recorded Warranty Deed showing the ownership of the subject parcel.
- d. A signed lease agreement between the property owner and the owner of the Wireless Communication Facility if different than the property owner, and when applicable, a copy of the lease or sublease between the owner of a Wireless Communications Facility and an applicant seeking to collocate additional wireless equipment on the structure. Clauses related to lease term or rent may be deleted or censored.
- e. A stamped or sealed structural analysis of the proposed Wireless Communications Facility prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the facility including a statement by said engineer that the facility is structurally sound and conforms to the applicable codes, including the standards set forth in this Chapter.

- f. An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:
 - (1) That the radio frequency emissions comply with FCC standards for such emissions.
 - (2) That the construction and placement of the Wireless Communications Facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties.
 - (3) The technical need for the proposed Facility.
 - (4) Proof of an FCC license to transmit and receive radio signals in Monroe County.
- g. The following are additional submittal requirements for all New, Replacement or Stealth Towers and Satellite Earth Station facilities:
 - (1) One (1) original and two (2) copies of a sealed land survey of the parent parcel(s) showing all existing uses, structures, and improvements.
 - (2) The required affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer must additionally include:
 - (A) That the height of the proposed Wireless Communications Facility is the minimum necessary.
 - (B) Why an alternate Wireless Communications Facility such as Stealth or Attached, in accordance with the hierarchy established within this section of the LDRs could not be used.
 - (C) The Geographic Search Area of the proposed Facilities.
 - (D) A technical analysis demonstrating why none of the existing Wireless Communications Facilities located within the applicant's Geographic Search Area can accommodate the applicant's proposed Wireless Communications Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements; antenna height requirements, structural support requirements, ground space requirements for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology.
 - (E) A description of the technological design plan proposed by the applicant demonstrating why design alternatives to the proposed Wireless Communications Facility, such as microcell design, cannot be utilized to accomplish the provision of the applicant's proposed telecommunications services.
 - (F) Documentation of the efforts made by the applicant to install or to collocate the applicant's proposed Wireless Communications Facility on an Existing Tower.
 - (3) The required three (3) sets of signed and sealed site plans must additionally indicate the:
 - (A) Development Area;
 - (B) Fall Zone;
 - (C) All proposed new development including fencing;
 - (D) Stormwater Management Calculations for all new impervious surfaces, including the dimensions and locations of swales or berms;
 - (E) Landscaping bufferyards and planting lists;
 - (F) Open Space calculations.

- (4) Photographs of the proposed development site and if applicable, three (3) copies of a vegetation survey or Habitat Evaluation Index (HEI) and Transplantation Plan.
- (5) Photo-simulated post construction renderings of the proposed development as determined during the pre-application conference.
- (6) A signed statement from the Tower owner, and the property owner if different from the Tower owner, agreeing to allow the Collocation of other wireless equipment on the proposed Tower.
- (7) A coordination letter from the United States Fish and Wildlife Service (USFWS) indicating that the proposed Tower and Ancillary Structures will have no significant adverse impact upon wildlife including, but not limited to, migratory birds. Should the USFWS require mitigation, the mitigation strategy agreed upon by the applicant and the USFWS must be submitted to the City prior to issuance of the development permit from the City.
- (8) An inventory and map indicating all existing structures within the Geographic Search Area, which can accommodate collocation of the proposed structures or equipment.
- (9) Proof of FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace, must be submitted for all New, Replacement or Stealth Tower facilities.

G. *Approval Criteria.* The following approval criteria apply to all Wireless Communications Facilities:

1. *Radio Frequency Emissions.* The Radio Frequency Emissions shall comply with FCC standards for such emissions.
2. *Open Space.* Pursuant to City LDRs, the development proposal shall be required to meet the open space ratio required for the land use district or the habitat where they are located. For the purposes of this Chapter the following shall be used to calculate open space:
 - a. The area beneath all Equipment Enclosures; plus
 - b. The area of the Wireless Communications Facility foundation at or above grade; plus
 - c. The area beneath Ancillary Structures excluding that area which is beneath guy wires (if applicable); plus
 - d. The area inside a lattice type structure framework.
3. *Security.* Fencing, in accordance with Chapter 107, Article 10 of the LDRs, and Anti-climbing Devices shall be required to preserve security on Wireless Communications Facilities.

~~4. *Signage.* The only signage that is permitted upon a Tower, Equipment Enclosures, or fence shall be for security or safety, such as a property management sign which may include the address and telephone numbers; or shall be informational for the purpose of identifying the Tower as well as the party responsible for the operation and maintenance of the facility. Any such sign must comply with the size limitations established in City LDRs.~~

~~4.5. *Structural Integrity.* The entire Wireless Communications Facility and all appurtenances shall be designed pursuant to the most current wind speed design requirements as set forth in the applicable building code. Any Collocation of an antenna on an existing tower shall not impair the tower's ability to maintain the most current wind speed design requirements as set forth in the applicable building code.~~

~~5.6. *Landscaping.* Landscaping and or screening in the form of at least a medium bufferyard pursuant to Chapter 107, Article 8 of the City LDRs shall be required around the Development Area for all new towers and Earth Satellite Stations. Landscaping and or screening in the form of~~

at least medium bufferyard pursuant to the City LDRs shall be installed around the development area to the maximum extent practicable for any Replacement Tower. Landscaping or screening requirements for a Stealth Tower shall be at the discretion of the City Manager or for a Stealth Tower.

H. *Additional Criteria.* In addition to the provisions above, for all New, Replacement or Stealth Towers and Satellite Earth Stations the following conditions apply:

1. *Structural Integrity.* The new tower shall be designed to ensure that in the event of a structural failure or natural disaster, the tower shall collapse in a limited, defined fall zone.
2. *Structural Capacity.* The new tower shall be designed to accommodate the maximum number of providers whose antenna(e) can be collocated on the Tower and whose equipment enclosures can be accommodated in the subject parcel.
3. *Lighting.* Except at the discretion of the City Manager or designee, any new Tower shall not have lighting higher than 20 feet above the ground unless required by the FAA or the FCC. Communication towers shall not be artificially lighted unless required by the FAA or any other authority with jurisdiction. If lighting is required, strobe lighting shall be utilized during daylight hours only and red lighting shall be utilized at night unless another form of lighting is required by the FAA or any other authority with jurisdiction.
4. *Aesthetics.* A new or replacement tower that is not regulated in appearance by the FAA shall maintain a galvanized gray finish or other accepted contextual or compatible color approved by the City Manager. No stealth facility, whether fully enclosed within a building or otherwise, shall have Antennas, Antenna Arrays, transmission lines, Equipment Enclosures or other ancillary equipment which is readily identifiable from the public right-of-way as wireless communications equipment. Satellite Earth Stations shall maintain contextual or compatible color(s) as determined by the City Manager or designee so as to maintain compatibility with surrounding land uses.
5. *Compatibility with Community Character.* The Communications Facility shall be compatible consistent with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties. Where a Wireless Communications Facility is allowed as of right, compatibility shall be presumed unless the City can demonstrate otherwise. The following attributes shall be considered from vantage points within one (1) mile of the base of the proposed of Tower and from 300 feet from the base of a Satellite Earth Station:
 - a. Height;
 - b. Mass and scale;
 - c. Materials and color; and
 - d. Illumination.
6. An attached Wireless Communications Facility shall only be attached to a commercial retail or office, industrial, hotel, multifamily, institutional, or public building of at least 35 feet in height.
7. The following height criteria applies to Wireless Communications Facilities:
 - a. A New, Replacement or Stealth Tower shall not exceed 250 feet in height. In addition to the height limitations included in use regulations governing "Airports" within this chapter, the overall height of a tower located in the vicinity of a public or private airport shall be limited by the following:
 - (1) A 35:1 Glide Path ratio in the Horizontal Zone limiting the height of a Tower to 150 feet within one (1) statutory mile (5,280 feet) from the edge of the private airport Primary Surface.

- (2) A 12:1 Glide Path ratio in the Conical Zone limiting the height of a Tower to 600 feet within one (1) statutory mile (5,280 feet) from the edge of the Horizontal Zone.
 - (3) Any Collocation of an antenna on an Existing Tower shall not increase the overall height of the Tower.
 - (4) For Attached Facilities, any Antenna, Antenna Array, attachment device, Ancillary Structure equipment or Equipment Enclosure shall not exceed the highest point of the building by more than 20 feet.
 - (5) The maximum height for any portion of a Satellite Earth Station is 35 feet. If any portion projects over 35 feet as measured from the existing grade, the Wireless Communications Facility shall be reviewed under all provisions of the Code applicable to a New Tower Facility.
8. The following setback criteria apply to Wireless Communications Facilities:
 - a. All new Towers, Stealth Towers and Satellite Earth Stations and their Equipment Enclosures and associated Ancillary Structures shall meet the minimum setback requirements for the land use district where they are located pursuant to Table 103.15.2 of the City LDRs or meet the environment setback criteria established for shorelines, wetlands or Marine Turtle nesting habitat where applicable. Notwithstanding these setback requirements, the Tower or Dish Satellite Earth Station structure shall be located so that the Fall Zone is located entirely within the boundaries of the subject parcel.
 - b. All Replacement Towers and their Equipment Enclosures and associated Ancillary Structures and those for Collocation antennas shall meet the minimum setback requirements listed above to the maximum extent practicable. Replacement Tower foundations shall not be any closer to the property lines than the foundation of the original Tower being replaced.
 - c. All Attached Antenna or Antenna Arrays, Equipment Enclosures and ancillary equipment placed on the roof of a building shall be as close to the center of the roof as is feasible in light of any engineering limitations of the building, unless the Attached Wireless Communications Facility is camouflaged, screened, or painted so as to blend in with the building where it is located.
 - I. *Liability Insurance.* A holder of a permit for Wireless Communications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the permit in amounts as set forth below:
 1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate.
 2. Automobile Coverage: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate.
 3. Workers Compensation and Disability: Statutory amounts.
 4. The Commercial General liability insurance policy shall specifically include the City and its officers, employees, committee members, attorneys, agents and consultants as additional named insured.
 5. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
 6. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days prior written notice in advance of the cancellation of the insurance.
 7. Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance which such policies are to renew or replace.

8. Before construction of a permitted Wireless Communications Facilities is initiated, but in no case later than 15 days after the grant of the permit, the holder of the permit shall deliver to the City a copy of the each of the policies or certificates representing the insurance in the required amounts.
- J. *Hierarchy.* In addition to all other development requirements, a hierarchy shall be utilized to determine the approval or denial of an application for a particular development permit under this Chapter. Any application under this Chapter may be denied if a feasible alternative that is higher on the hierarchy is available. The hierarchy shall be in descending order as follows:
1. Collocation;
 2. Attached Wireless Communications Facility;
 3. Replacement Tower;
 4. Stealth Wireless Communications Facility; and
 5. New Tower or Satellite Earth Station.
- K. *Abandoned Wireless Communications Facilities.*
1. If the use of a Wireless Communications Facility is discontinued, the property owner or Provider shall provide written notice to the City of its intent to discontinue the use and the effective date of such discontinuance.
 2. In the event the use of a Wireless Communications Facility has been discontinued for a period of 180 days whether voluntarily, involuntarily, or upon revocation of the development permit or the biennial report required within this Section of the Code if not filed, the Facility shall be deemed to be abandoned. Upon receipt of a notice of discontinuation specified in Subsection (a) or upon abandonment under Subsection (b), the City Manager or designee shall provide the property owner with written notice of an abandonment determination by certified mail.
 3. The property owner shall have 120 days from receipt of the notice to: (i) reactivate the use of the Wireless Communications Facility; (ii) transfer the Wireless Communications Facility to another owner who makes actual use of the facility within the 120 day period; or (iii) dismantle and remove the Wireless Communications Facility.
- L. *Inspections.*
1. The City Manager or designee shall require annual inspections of Wireless Communications Facilities every two (2) years to ensure structural and electrical integrity and compliance with the applicable City Codes. Based upon the results of the inspection, the City may make impose additional requirements such as, but not limited to; additional landscaping, stormwater retention, repair or removal of structures or the Wireless Communications Facility.
 2. The owner(s) of Wireless Communications Facilities shall submit a report to the City performed by an engineer licensed by the State of Florida certifying structural and electrical integrity every two (2) years. The report shall be accompanied by a nonrefundable fee of \$200.00 to reimburse the City for the cost of review.
- M. *Temporary Towers.*
1. The City Manager may authorize the issuance of a permit for a temporary Wireless Communications Facility in order for a Provider to provide services when an existing Facility has been damaged in a declared emergency or when a development permit has been issued under this Chapter during the construction of the Facility.
 2. The location of the temporary Wireless Communications Facility and the duration of the permit shall be determined by the City Manager; however, no permit shall extend beyond 90 days.
 3. The City Manager shall determine minimum insurance and bonding requirements for temporary facilities as a condition of issuance of the permit.

4. Temporary Facilities may be permitted at the discretion of the City Manager for a public assembly as part of a Public Assembly permit issued under the Code. A permit issued under this Subsection shall not exceed the duration of the public assembly permits.

N. *Expert Review.*

1. The City Manager or designee may require a technical review of the application by applicable independent experts, which may include an engineer, a Radio Frequency Engineer, and a planner. The technical review shall address the following:
 - a. The accuracy and completeness of the required submissions;
 - b. The applicability of analysis, techniques and methodologies;
 - c. The validity of the analysis submitted by the Applicant's Radio Frequency Engineer as to the technical needs of the Provider to locate the Facilities in the particular Geographic Search Area and the inability to locate on existing Facilities;
 - d. Whether the proposed Wireless Communications Facility complies with the applicable approval criteria set forth in this Chapter; and
 - e. Other matters deemed by the City Manager or designee to be relevant to determining whether a proposed Wireless Communications Facility complies with the provisions of this Chapter.
2. Based on the results of the technical review, the City Manager or designee may require changes to the applicant's application or additional submittals.
3. The cost to the City for the expert's technical review shall be paid by the applicant. At the applicant's option, the applicant may request an expedited review. Any additional costs associated with the expedited review shall also be paid by the applicant. The applicant shall reimburse the City within five (5) working days of the date of receipt of an invoice for expenses associated with the expert's review of the application. Failure by the applicant to make reimbursement pursuant to this Section shall abate further review of the application until the reimbursement is paid in full to the City.

O. *Equipment Enclosures.* Equipment Enclosures shall comply with the minimum bulk and height requirements of the applicable zoning district where such buildings are situated.

1. An Equipment Enclosure shall be considered a permanent structure, shall be unmanned, and shall not exceed 500 square feet in size. Multiple Equipment Enclosures may be permitted on a Development Area; provided, however, that the total aggregate square footage of such Equipment Enclosures shall not exceed 1,000 square feet unless a Radio Frequency Engineer determines by technical review of the Code that additional square footage is required.
2. Mobile or immobile equipment, construction materials or vehicles not used in direct support of a Wireless Communications Facility shall not be stored or parked on the site, unless repairs to the Wireless Communications Facility are being made.

P. *Variances for Wireless Communications Facilities.*

1. A variance to this Chapter shall be submitted to the City in accordance with the submittal requirements and review process set forth in Chapter 102, Article 20 of the LDRs.
2. When considering an application for a variance from the standards of this chapter, the following shall be the exclusive factors considered:
 - a. Whether failure to grant the variance would prohibit or have the effect of prohibiting the provision of personal Wireless Communications Services by the applicant;
 - b. Whether failure to grant the variance would unreasonably discriminate among providers of functionally equivalent personal Wireless Communications Services;
 - c. Physical characteristics of the proposed Wireless Communications Facility for which the variance is requested;

- d. The importance to the community of the Wireless Communications Services to be provided if the proposed variance is granted;
- e. The compatibility of the proposed variance with adjacent land uses, the visual impact of the scale of the Facilities on adjacent properties, and the availability of alternative sites and technologies in light of existing permitted development in the area;
- f. Whether granting of the proposed variance will obviate the need for additional new Wireless Communications Facilities due to increased Collocation opportunities that would not be possible if the variance were not granted; and
- g. Whether granting of the proposed variance is necessary to ensure adequate public safety and emergency management communications. A variance may be granted under this Section exclusively for the following approval criteria set forth in this Chapter:
 - (1) Setbacks;
 - (2) Landscaping;
 - (3) Height; and
 - (4) Environmental Design Criteria.

Q. *Administrative Deviations.*

- 1. Notwithstanding the provisions of Article 20 "Variance", Chapter 102 of the LDRs, the City Manager or designee may approve a minor deviation from any development approval granted pursuant to this chapter, provided the deviation does not affect the safety of the Wireless Communications Facility.
- 2. A minor deviation shall not exceed ten (10%) percent of the applicable requirement, and may be granted exclusively for the following development criteria of this Chapter:
 - a. Location: A minor deviation allowing the relocation of the Antennae and its supporting structure, including a Tower, Equipment Enclosure, and Ancillary Structures up to ten (10%) percent of the distance shown on the approved site plan, or 25 feet, whichever is less. In no event, shall the relocation of the Antennae and its supporting structure, including a Tower, Equipment Enclosure, and Ancillary Structures result in an encroachment into the setbacks established in this Chapter;
 - b. Development Area;
 - c. Landscaping; and
 - d. Height: A minor deviation for height of up to ten (10%) percent of the approved plan, not to exceed an overall height of 250 feet, may be approved if technical evidence is submitted justifying to request.
- 3. Any deviation in excess of that authorized by this chapter shall be subject to the requirements of Article 20 "Variance", Chapter 102, of the LDRs.

R. *Nonconforming Wireless Communications Facilities.*

- 1. All Wireless Communications Facilities which do not meet the requirements of this Chapter, existing as of the effective date of this Chapter shall be considered nonconforming uses and structures under Article 2 "Nonconforming Structures, Chapter 108.
- 2. Notwithstanding the provisions of Subsection H.7.(a), the Replacement of, Collocation or the addition of Equipment Enclosures on an existing Wireless Communications Facility as provided in this section shall not be considered an expansion of a nonconforming structure.

S. *Application Denial.*

- 1. Denial of any application shall be in writing and include written findings of fact.
- 2. In addition to any other grounds for denial, any application under this Chapter may be denied to the extent necessary to preserve a prehistoric or historic district or site, building, structure or object included in or eligible for inclusion on the National Register of Historic Places.

SECTION 3. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 6. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
THIS XX DAY OF XXXX, 2024.**

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven Williams, City Attorney



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: February 26, 2024
To: Planning Commission
From: Brian Shea, Planning Director

Agenda Item: An Ordinance By The City Of Marathon, Florida, Amending Chapter 107, Article 13 (“Concurrency Management”) By Amending Section 107.113 Titled “Enforcement” To Clarify The Penalties; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; Providing For The Transmittal Of This Ordinance To The State Department Of Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL

BACKGROUND:

APPLICANT: City of Marathon

REQUEST:

The draft ordinance has been proposed to modify language in Chapter 107, Article 13, Section 107.113 of the Marathon Code of Ordinances as it pertains to enforcement and the penalties that may be imposed for violations.

Purpose of Proposed Amendment:

The purpose of the amendment is to remove the ambiguity as to the penalties that may be imposed for violations of the section.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;
2. The consistency of the proposed amendment with the Comprehensive Plan; and

3. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.
- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
1. Approved as proposed;
 2. Approved with amendments proposed by the PC; or
 3. Denied

Section 102.27. - Hearing(s) by Council.

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criterion and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

The existing language as written is ambiguous. In order to make clear this ambiguity, the section needs to reflect the maximum penalties for same.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Objective 6-1.3 entitled Concurrency management, and subsequent policies sets the standards for concurrency management. Removing ambiguity in the enforcement allows for better management practices overall.

C. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by ensuring compliance and enforcement as a mechanism to achieve compliance.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL

Sponsored By:
City Council Public Hearing Date: XXXXX, 2024
XX, 2024
Enactment Date: XXXXXX XX, 2024

**CITY OF MARATHON, FLORIDA
ORDINANCE 2024-XX**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 107, ARTICLE 13 (“CONCURRENCY MANAGEMENT”) BY AMENDING SECTION 107.113 TITLED “ENFORCEMENT” TO CLARIFY THE PENALTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMERCE AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, *Florida Statutes*, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City of Marathon is located within an Area of Critical State Concern, pursuant to Sections 380.05 and 380.0552, *Florida Statutes*; and

WHEREAS, Florida Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, *Florida Statutes*, which have been approved by the State, as required by law; and

WHEREAS, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, *Florida Statutes*; and

WHEREAS, Chapter 107, Article 13, Section 107.113 of the Marathon Code of Ordinances is ambiguous as to the penalties that may be imposed for violations of the section; and

WHEREAS, in order to make clear this ambiguity, the section needs to reflect the maximum penalties for same.

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

~~Strikethrough~~ = deletion

Bold underline = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. “Enforcement.” is hereby amended to read as follows:

Section 107.113. – Enforcement.

A violation of this Chapter shall be a ~~misdemeanor~~ punishable **by up to a \$500 fine and / or imprisonment for up to 60 days, consistent with Florida Statutes** ~~according to law;~~ **and shall be prosecuted in the same manner as misdemeanors are prosecuted in a court having jurisdiction of misdemeanors.** ~~however,~~ In addition to or in lieu of any ~~criminal~~ prosecution, the City shall have the power to sue in civil court to enforce the provisions of this Chapter. Violations of this Chapter may also be referred to the City of Marathon Code Compliance Board for enforcement in accordance with Fla. Stat. ch. 162, and Chapter 10 of the City of Marathon Code of Ordinances, which relate to the Code Compliance Board.

SECTION 3. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 6. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
THIS XX DAY OF XXXX, 2024.**

THE CITY OF MARATHON, FLORIDA

Robyn Still, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

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

Steven Williams, City Attorney