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BY: *[Signature]*

STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

JEB BUSH
Governor

THADDEUS L. COHEN, AIA
Secretary

April 29, 2005

Mr. Mike Puto
City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

Dear Mr. Puto:

Thank you for submitting copies of the City's Compliance Agreement Plan Amendment adopted by Ordinance No. 2005-07 on March 8, 2005, for our review. We have conducted an inventory of the adopted plan amendment to verify the inclusion of all required materials. The reference number for the amendment is 05R1.

The submission package appears to be complete. The Department will conduct a compliance review and issue a Notice of Intent regarding the adopted amendment in accordance with procedures contained in Section 163.3184, Florida Statutes. Once the review is underway, you may be asked to provide additional supporting documentation by the review team to ensure a thorough review. The Department's Notice of Intent will be published on or about May 26, 2005.

If you have any questions, please contact Roger Wilburn, Acting Regional Planning Administrator, for region 11, which will be assigning the adopted plan amendment for review at (850) 922-1822.

Sincerely,

D. Ray Eubanks, Administrator
Plan Review and Processing

DRE:lw

cc: Carolyn Dekle, Ex. Director
South Florida Regional Planning Council
Gail Kenson, Planning Director

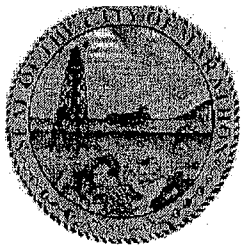
2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
2796 Overseas Highway, Suite 212
Marathon, FL 33050-2227
(305) 289-2402

COMMUNITY PLANNING
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-2356

EMERGENCY MANAGEMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-7956



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050

Phone: (305) 743-0033 Fax: (305) 743-3667

5 April 2005

Ray Eubanks, Community Program Administrator
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Subject: City of Marathon Comprehensive Plan
Stipulated Settlement Agreement

Dear Mr. Eubanks:

Pursuant to Florida Statute 163.3184, enclosed please find copies of the City of Marathon Comprehensive Plan and Stipulated Settlement Agreement approved on March 8, 2005 by the Marathon City Council by Ordinance 2005-07 and Resolution 2005-022, for transmittal to the Department of Community Affairs.

Also included for your review are the following items:

- Affidavit of Publication in the *Key West Citizen* of the Legal Notice for Ordinance 2005-07 and Resolution 2005-022
- Certified copies of Ordinance 2005-07 and Resolution 2005-022
- Copy of the NOI indicating changes made to comply with NOI
- 3 copies of the Comprehensive Data, Inventory and Analysis and the maps associated with the Plan
- 1 set of large format PLUM maps as requested by the Department
- Copy of the Citizen Courtesy Information List
- Five original copies of the signed Stipulated Settlement Agreement (four copies to be returned to the City to be distributed to the other parties) with required attachments

The City of Marathon contact person is:

Mike Puto, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050
(305)289-4130 (phone)
(305)289-4123 (fax)
putonm@ci.marathon.fl.us

CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050

Phone: (305) 743-0033 Fax: (305) 743-3667

The paper the Department will publish the required Notice of Intent is the *Key West Citizen*. The contact person at the *Key West Citizen* is:

Mary Beth Canitano

Advertising Coordinator/Legal Advertising

Phone (305) 292-7777 ext. 219

Fax (305) 294-0768

E-mail: mcanitano@keysnews.com or legals@keysnews.com

Copies of the Plan were sent to the following agencies:

Department of Education

Stanley Goldstein

Turlington Building, Room 1054

Tallahassee, Florida 32399-0400

Department of Environmental Protection

Lindy McDowell, Environmental Manager

Office of Intergovernmental Programs

39000 Commonwealth Boulevard, Mail Station 47

Tallahassee, Florida 32399-3000

Department of State

Susan Harp, Historic Preservation Planner

Bureau of Historic Preservation

500 South Bronough Street

Tallahassee, Florida 32399-0250

Florida Department of Transportation, District Six

Gary Donn, Director of Planning and Public Transportation

602 South Miami Avenue

Miami, Florida 33130

South Florida Regional Planning Council

Robert J. Daniels, Principal Planner

3440 Hollywood Boulevard

Hollywood, Florida 33021

South Florida Water Management District

P. K. Sharma, Lead Planner

PO Box 24680

West Palm Beach, Florida 33416-4680

CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050

Phone: (305) 743-0033 Fax: (305) 743-3667

Monroe County Growth Management
Tim McGarry, Director
2798 Overseas Highway, Suite 410
Marathon, Florida 33050

Should you have any questions, or require any additional information, please feel free to contact me.

Sincerely,



Mike Puto
City Manager

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-022**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, APPROVING
A COMPLIANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF
COMMUNITY AFFAIRS RELATING TO THE CITY OF MARATHON
COMPREHENSIVE PLAN; AUTHORIZING THE TRANSMITTAL TO THE
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS**

WHEREAS, the City of Marathon adopted a Comprehensive Plan (Plan) by Ordinance 2003-11 on July 13, 2004; and

WHEREAS, the State of Florida, Department of Community Affairs (DCA) issued its Statement and Notice of intent regarding the Plan on September 8, 2004; and

WHEREAS, as set forth in the Statement of Intent, DCA contends that the Plan is not “in compliance” with Chapter 163, Part II, F.S., Sections 380.05 and 380.0552, Florida Statutes, the State Comprehensive Plan and Chapter 9J-5, Florida Administrative Code (F.A.C.); and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, DCA initiated a formal administrative proceeding challenging the Plan “Department of Community Affairs, South Florida Regional Planning Council, and Coco Plum Property Owners Association v. the City of Marathon, DOAH Case No. 04-3500 GM”, (Litigation); and

WHEREAS, the City disputes the allegations of the Statement of Intent and the issues raised in the Litigation regarding the Plan; and

WHEREAS, the City and DCA (and South Florida Regional Planning Council and the Coco Plum Property Owners Association) have conducted several meetings in an attempt to negotiate a settlement to the Litigation and wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this Litigation under the terms of a Stipulated settlement agreement (Compliance Agreement), and agree it is in their respective mutual best interests to do so.

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

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

Section 2. The Compliance Agreement between the City of Marathon and the Department of Community Affairs, a copy of which is attached as Exhibit “A”, together with such

non-material changes as may be acceptable to the City manager and approved as to form and legality by the City Attorney, is approved

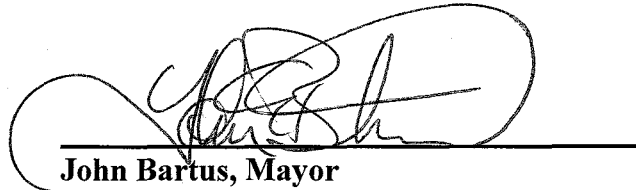
Section 3. The City Manager or his designee and City Attorney are authorized to take all steps necessary to implement the terms and conditions of the Compliance Agreement, to hold such public hearings as are necessary, and to transmit any required amendments to DCA.

Section 4. The Mayor is authorized to execute the Compliance Agreement and any other documents necessary to comply with the Compliance Agreement.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 8th day of March, 2005.

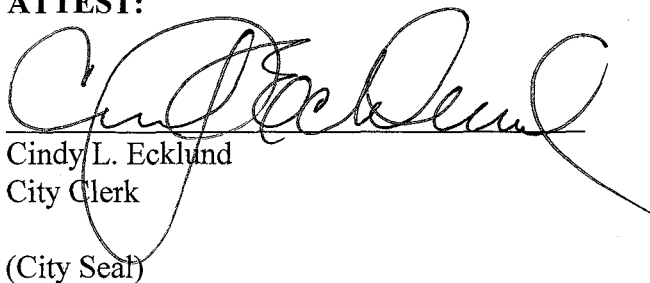
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:


ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

STATE OF FLORIDA, DEPARTMENT
OF COMMUNITY AFFAIRS,

Petitioner,

vs.

CITY OF MARATHON, FLORIDA,

Respondent,

vs.

DOAH Case No.04-3500 GM
Docket No. 04-00350

SOUTH FLORIDA REGIONAL PLANNING
COUNCIL AND COCO PLUM BEACH
PROPERTY OWNERS ASSOCIATION, INC.,

Interveners.

STIPULATED COMPLIANCE AGREEMENT

THIS STIPULATED COMPLIANCE AGREEMENT is entered into by and between the Petitioner State of Florida, Department of Community Affairs, Respondent, City of Marathon, Florida, and Interveners, South Florida Regional Planning Council and Coco Plum Beach Property Owners Association, Inc., as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the State of Florida, Department of Community Affairs (hereinafter, "DCA" or "Department"), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, the City of Marathon, Florida (hereinafter, "City" or "Local Government") is a local government with the duty to adopt a comprehensive plan that is "in compliance;" and

WHEREAS, the Local Government adopted its Comprehensive Plan (hereinafter, "Plan") by Ordinance Number 2003-11 on July 13, 2004; and

WHEREAS, the Department issued its Statement and Notice of Intent regarding the Plan on September 8, 2004; finding the Plan "not in compliance;" and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Plan is not "in compliance" because the City did not amend the Plan, as required, to implement recommended planning actions identified in the Department's objections, recommendation and comments (hereinafter "ORC") that would correct identified Plan deficiencies or issues; and

WHEREAS, pursuant to Section 163.3184(10), Fla. Stat., (2003), DCA has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the South Florida Regional Planning Council and Coco Plum Beach Property Owners Association, Inc. were granted leave to intervene in this proceeding (hereinafter, "Interveners"); and

WHEREAS, the Local Government disputes the allegations of the Statement of Intent regarding the Plan; and

WHEREAS, the Parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so; and

NOW, THEREFORE, in consideration of the mutual covenants and promises herein below set forth, and in consideration of the benefits to accrue to each of the Parties, the receipt

and sufficiency of which are hereby acknowledged, the Parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

(a) Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, *Florida Statutes*.

(b) Agreement: This stipulated compliance agreement.

(c) City: City of Marathon, Florida.

(d) Comprehensive Plan: Comprehensive Plan adopted by the Local Government on July 13, 2004.

(e) Department: State of Florida, Department of Community Affairs.

(f) DOAH: The Florida Division of Administrative Hearings.

(g) In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), *Florida Statutes*.

(h) Interveners: South Florida Regional Planning Council and Coco Plum Beach Property Owners Association, Inc.

(i) Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the Plan not in compliance.

(j) Parties: The Department, City and Interveners.

(k) Petition: The petition for administrative hearing and relief filed by the Department in this case.

(l) Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the Plan into compliance.

(m) Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

(n) Statement of Intent: The statement of intent to find the Plan not in compliance issued by the Department in this case.

(o) Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the Parties conferred and agreed to resolve the issues in the Petition and Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the Parties in this proceeding.

4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate, under Section 163.3184(16)(f), *Florida Statutes*.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Department's Petition, which identifies the provisions of the Plan not in compliance. Exhibit B contains the Remedial Action and Remedial Plan Amendment needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Action is accomplished, the Plan will be in compliance.

6. Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions and Remedial Plan Amendments described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. On or before 60 days from execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Plan Amendments as set forth in Exhibit B. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit three (3) copies of the amendment to the Department as provided in Rule 9J-11.011(5), *Florida Administrative Code*. The Local Government also shall submit one copy to the Regional Planning Agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment, and Interveners. The Remedial Plan Amendment shall be transmitted to the

Department along with a letter that describes the remedial action adopted for each part of the Plan amended, including references to specific portions and pages. The remedial actions required on Exhibit B shall be accomplished by the City within the time frame set forth in Exhibit B.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), *Florida Statutes*, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, *Florida Statutes*, for the adopted amendments in accordance with this Agreement.

(a) In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

(b) Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), *Florida Statutes*.

11. Purpose of this Agreement; Not Establishing Precedent. The Parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affected by many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(15)(c), *Florida Statutes*. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Department, the Local Government and Interveners.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the Parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), *Florida Statutes*.

18. Retention of Right to Final Hearing. All Parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. All Parties to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All Parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the Parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the Parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion, which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. Facsimile signatures acceptable. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose. Executed originals received by Facsimile are deemed acceptable to all Parties since time is of the essence.

23. Captions: The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

Approved as to form and legality:

By: _____
Valerie Hubbard, AICP
Division of Community Planning

Assistant General Counsel

Date:

Date:

STATE OF FLORIDA)
) ss
COUNTY OF LEON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

Notary Public

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

SOUTH FLORIDA REGIONAL PLANNING COUNCIL

Carolyn A. DeKle

Carolyn A. DeKle,
Executive Director

Approved as to legal form:

BY: *Samuel S. Goren* 4/1/05
Samuel S. Goren, Esq.
General Counsel to SFRPC

STATE OF FLORIDA)
) ss
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 4th day of April, 2005, by _____, who is personally known to me or who has produced _____ as identification and who did/did not take an oath.



Kathe Ann Lerch
MY COMMISSION # DD083053 EXPIRES
January 25, 2006
BONDED THRU TROY FAIR INSURANCE, INC.

Kathe Ann Lerch
Notary Public

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

COCO PLUM BEACH PROPERTY OWNERS ASSOCIATION, INC.

Lynda Berrigan
Lynda Berrigan, President

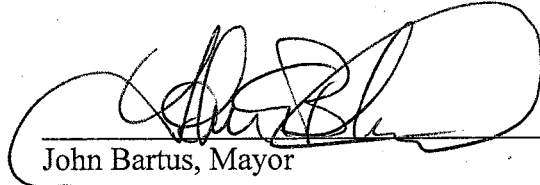
STATE OF FLORIDA)
) ss
COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 4 day of April, 2005, by Lynda Berrigan, who is personally known to me or who has produced FL. DRIVERS LICENSE as identification and who did/did not take an oath.

[Signature]
Notary Public


[SIGNATURES CONTINUED ON FOLLOWING PAGE]

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

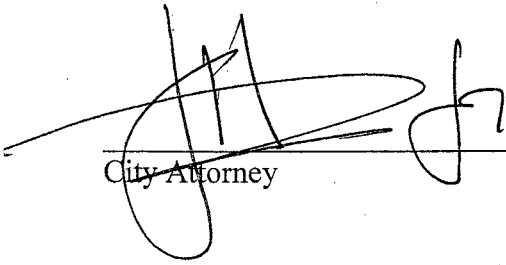
ATTEST:



Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney

EXHIBIT “A”

**THE COMPREHENSIVE PLAN IS PROVIDED
UNDER SEPARATE COVER.**

**THIS IS LOCATED ON THE CITY WEBSITE
UNDER, DOCUMENT CENTER, PLANNING
FOLDER, COMPREHENSIVE PLAN.**