

**CITY OF MARATHON, FLORIDA
RESOLUTION 2005-159**

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

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

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

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


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

Section 2. The City Council hereby approves Development Order Number 2005-15, a copy of which is attached hereto as Exhibit "A", granting a major conditional use to the Applicants for the Proposed Use. The Director of Planning is authorized to sign the Development Order on behalf of the City.

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

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

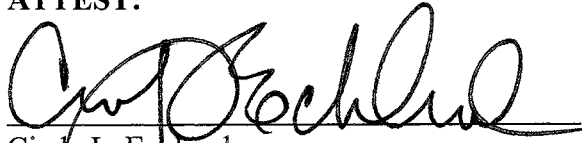
THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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


ATTEST:



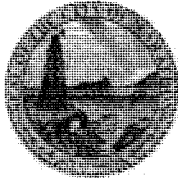
Cindy L. Ecklund
City Clerk

(City Seal)

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



City Attorney



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

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

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

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

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

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

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

FINDINGS OF FACT:

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

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

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

CONDITIONS IMPOSED:

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

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

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

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

VIOLATION OF CONDITIONS:

The Applicants understand and acknowledge that they must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicants or their successor or designee is in non-compliance with this Development Order or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

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

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

RECORDING:

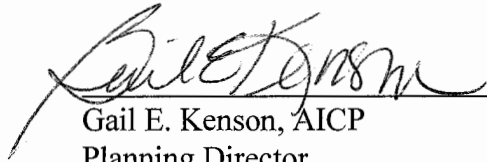
The Applicants shall at their sole cost and expense, record a certified copy this Development Order in the Public Records of Monroe County, Florida within five (5) days of receipt of same from the City.

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

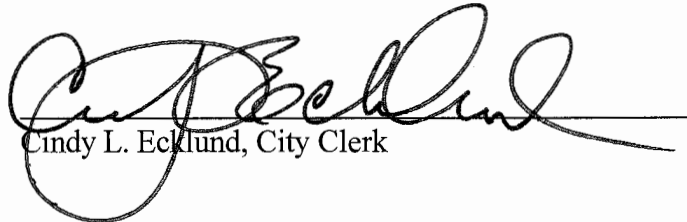
EFFECTIVE DATE:

The Director of Planning shall sign this Development Order, and it shall not take effect for thirty (30) days following the date it is rendered/filed with the City Clerk. During that time, the major conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this Development Order until said appeal is resolved.

23 Nov 05
Date


Gail E. Kenson, AICP
Planning Director

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


Cindy L. Ecklund, City Clerk

NOTICE

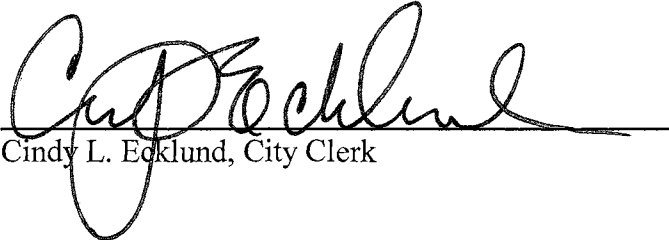
Section 9.5-72 (a) of Marathon City Code states that a conditional use permit shall not be transferred to a successive owner without notification to the Development Review Coordinator within five (5) days of the transfer.

Under the authority of Section 9.5-72(a) of the City of Marathon Land Development Regulations, this Development Order shall become null and void with no further notice required by the City, unless a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within six (6) months of the expiration of the Department of Community Affairs appeal period or the date when the Department of Community Affairs waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this Development Order is approved by the City Council.

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

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Florida Keys Animal Encounters, LLC, 10602 7th Avenue, Marathon, Florida 33050, this 23 day of November, 2005.

A handwritten signature in cursive script, appearing to read "Cindy L. Ecklund", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large initial "C" and "E".

Cindy L. Ecklund, City Clerk