

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

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

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

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

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

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

Section 2. The City Council hereby approves Development Order 2010-02, a copy of which is attached hereto as Exhibit "A", granting the Applicant's request for an amendment to a previously approved conditional use. The Director of Planning is authorized to sign the development order on behalf of the City.

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

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

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney



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

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

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

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

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

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

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

FINDINGS OF FACT:

1. The applicant is proposing one 2,800 square foot tiki-style commercial building, one 6,030 square foot commercial building, and several accessory structures for a sea life amusement park, including an animal encounter tank.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and

determined the Applicant met the following criteria:

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

CONDITIONS IMPOSED:

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

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

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

VIOLATION OF CONDITIONS:

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

CONCLUSIONS OF LAW:

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

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

EFFECTIVE DATE:

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

May 13, 2010
Date

George Garrett
George Garrett, Director of Planning

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

Diane Clavier
Diane Clavier, City Clerk

NOTICE

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

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

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to 10602 7th Avenue, Golf, Marathon, FL 33050 this 14th day of May, 2010.

Diane Clavier
Diane Clavier City Clerk