

ORDINANCE NO. 02-01-06

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING SECTION 9.5-4 "DEFINITIONS," SECTION 9.5-281 "MINIMUM YARDS," SECTION 9.5-286 "SHORELINE SETBACK," SECTION 9.5-288 "BULKHEADS, SEAWALLS, RIPRAP AND FENCES", SECTION 9.5-289 "SHORELINE ENVIRONMENTAL AND DEVELOPMENT CRITERIA," AND SECTION 9.5-299 "LOTS" OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS, AUTHORIZING ACCESSORY USES IN REAR, SIDE AND SHORELINE SETBACKS SUBJECT TO COMPLIANCE WITH MINIMUM STORMWATER MANAGEMENT CRITERIA AS A CONDITION OF DEVELOPMENT; PROVIDING FOR SEVERABILITY, THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, FOR INCLUSION IN THE CODE, FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS, AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS IN ACCORDANCE WITH STATE LAW.

WHEREAS, the City of Marathon, Florida (the "City") is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, Section 380.552, Florida Statutes, establishes Principals for Guiding Development in the FKACSC; and

WHEREAS, the Principals for Guiding Development provide that the Comprehensive Plan (the "Plan") and Land Development Regulations (the "LDRs") of the City shall protect its upland, shoreline and marine resources, its near shore waters, and the maximum well being of its residents through sound economic development; and

WHEREAS, the Plan went into effect in January, 1996; and

WHEREAS, a significant percentage of the existing structures within the City were developed prior to the effective date of the Plan, and are therefore, in non-compliance with the Plan and LDRs concerning stormwater management; and

WHEREAS, the lack of proper stormwater management within the City has resulted in near shore water quality problems; and

WHEREAS, the quality of the City's near shore waters is critical to the City's economic well being as a result of the significant role they have on the area's tourism; and

WHEREAS, allowing development of accessory structure and uses within the shoreline setback, while simultaneously requiring compliance with the Plan and LDRs concerning stormwater management furthers the Principals for Guiding Development in the FKACSC; and

WHEREAS, pursuant to Section 163.3174, Florida Statutes, and Section 9.5-22 of the LDRs, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the LDRs set forth in this Ordinance (the "Amendments") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendments; and

WHEREAS, in accordance with Sections 163.3184 and 166.041, Florida Statutes, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the LDRs; and

WHEREAS, the City Council finds the adoption of the Amendments is in the best interest of the City and complies with applicable State laws and rules; and

WHEREAS, the City Council desires to allow accessory uses within the rear yard and shoreline setbacks subject to compliance with minimum stormwater management criteria as a condition of development; and

**WHEREAS**, the City Council finds that enactment of this Ordinance furthers the objectives, goals, and policies of the City's Comprehensive Plan and the Principals for Guiding development of the FKACSC.

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

**Section 1.**     **Recitals.** The above recitals are true, correct, and incorporated herein by this reference.

**Section 2.**     **Definitions.** Section 9.5-4 of the City Code is hereby amended to read as follows:

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**Sec. 9.5-4. Definitions**

Continuous access means a natural passage or an existing manmade channel no shallower than four (4) feet at MLW and no narrower than twenty (20) feet.

Disturbed Wetland means wetlands where the topography, hydrology, soil or natural vegetation has been permanently impacted to such a degree that succession to the original wetland community is not likely.

Hard Bottom Community means submerged biological assemblages of sessile marine invertebrates occurring on hard substrate often providing habitat for non-attached marine fauna.

Open water means shorelines directly located on the Straits of Florida, Florida Bay, the Gulf of Mexico, and the Atlantic Ocean. Open water is not intended to mean shorelines on manmade canals, channels or basins that have access to open water but are not directly located on open water.

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<sup>1</sup> / Additions to existing text are shown by underline, deletions are shown as ~~strike through~~.

Shoreline means the interface between land and water; extending seaward of mean high water to include fringing mangroves and adjacent shelf and may also include a transitional zone landward of mean high water (MHW).

- a. "Altered shorelines" means those shorelines that are located directly along dredged canals, basins and channels or those shorelines that have been filled or vertically bulkheaded to such a degree that the original slope landward of the water is no longer present~~are generally located directly along dredged canals, basins and abutting channels and have been modified to such a degree that the shoreline no longer exhibits those functions typical of natural shorelines including filtration, nutrient uptake, shoreline stabilization, storm surge abatement, and provisions of habitat for wildlife and fisheries. A shoreline is not altered unless the function of both the transitional zone and the zone seaward of mean high water have been~~
  
- b. "Unaltered shorelines" means those shorelines that are located along natural non-dredged waterways and open water and the original natural conditions of the shoreline are present even though fill or riprap may be present~~are generally located along natural non-dredged waterways and open water. These shorelines continue to exhibit the natural functions cited above even though fill or rip rap may be present either above or below MHW.~~

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**Section 3.** **Minimum Yards.** Section 9.5-281 of the City Code is hereby amended to read as follows:

**Sec. 9.5-281. Minimum Yards.**

(a) Except as provided in Sections 9.5-266 of Division 3 and 9.5-282 of this Division and Section 9.5-309 of the City Code, no structure or land shall be developed, used or occupied except in accordance with the bulk regulations set out in the following table. Side yards indicated set forth the minimum single yard and the total side yards required. The first number is the minimum for any single side yard where only one (1) side yard exists; where there are two (2) side yards; the first number is the required side yard for one (1) of the two (2) side yards. The second number is the minimum combined total of both side yards (where there are two (2) side yards).

<i>Land Use District Land Use</i>	<i>Front Yard (ft.)</i>	<i>Side Yard (ft.)</i>	<i>Rear Yard (ft.)</i>
Urban Commercial:	15	10/15	10
Urban Residential:			
Attached Residential	15	10/15	10
Detached Residential	15	10/15	<u>10</u>
Urban Residential Mobile Home:			
Detached Residential	10 <sup>±</sup>	10/2015 <sup>±</sup>	10 <sup>±</sup>
Mobile Homes	10 <sup>±</sup>	10/2015 <sup>±</sup>	10 <sup>±</sup>
	<u>*Does not apply to replacement units in exactly the same footprint</u>		
Urban Residential Mobile Home-Limited:	10 <sup>±</sup>	10/2015 <sup>±</sup>	10 <sup>±</sup>
	<u>*Does not apply to replacement units in exactly the same footprint</u>		
Sub Urban Commercial:			
Hotel	25	10/15	10
Other	25	10/15	10
Sub Urban Residential and Sub Urban Residential Limited:			
Detached Residential	25	10/15	10
Attached Residential	25	<u>10/15</u>	<u>10</u>
Other	25	10/15	10

<i>Land Use District</i> <i>Land Use</i>	<i>Yard</i> <i>(ft.)</i> <i>Front</i>	<i>Yard</i> <i>(ft.)</i> <i>Side</i>	<i>Yard</i> <i>(ft.)</i> <i>Rear</i>
Sparsely Settled:			
Detached Residential	25	10/15	15
Attached Residential	25	N/A	15
Other	25	10/15	10
<u>Offshore Island:</u>	25	10/15	20
<u>Native Area:</u>	25	10/15	20
<del>Mainland Native</del>	<del>25</del>	<del>10/15</del>	<del>20</del>
Improved Subdivisions:			
<u>Lots of 4,500 square feet or larger</u>	25	10/15	20
<u>Lots of less than 4,500 square feet</u>	10	10/15	10
Destination Resort:	<del>50</del> <u>25</u>	<del>20/35</del> <u>10/20</u>	<del>30</del> <u>20</u>
Commercial Fishing (all districts):			
Detached Residential	25	10/15	20
Attached Residential	25	N/A	20
Other	25	10/15	20
Mixed Use:			
Detached Residential	25	10/15	20
Attached Residential	25	N/A	20
Other	15	10/15	10
<u>Recreational Vehicle:</u>	25	<u>10/20</u>	10
Maritime Industry:	25	10/15	25
Military Area:	25	5/20	20
Airport <u>District:</u>	200	200	200
Park and Refuge:	50	50	50
<del>Light Industrial:</del>	25*	10/15*	25*

\*These setbacks apply only where the Industrial district abuts a different land use district. No setbacks are required on the interior of the Industrial District where Industrial zoning abuts Industrial zoning, should a road intersect the Industrial District, then a fifteen (15) foot setback is required adjacent to the road.

~~\*Applies to new construction in URM & URML only, not to replacement units in existing footprint.~~

(b) Residential lots on street comers shall have a front yard along only one street, at least a ten (10) foot setback shall be maintained for the other side with street frontage.

An exception to the front yard setback requirement shall be allowed for driveways which may include a turn around area, walkways not to exceed five (5) feet wide and landscape features such as, but not limited to, decorative fountains and landscape lighting. These structures are subject to the following conditions, criteria and restrictions:

(1) The entire parcel must be brought into compliance with the stormwater management criteria set forth in the Plan and this Chapter;

(2) Any such stmeture within the front yard setback shall maintain the required setback from each side property line within the front yard;

(3) Whenever feasible, any such structure shall be made of permeable materials to allow the infiltration of stormwater runoff;

(4) The structure must be detached from the principal stmeture and must be non-enclosed;

(5) The structure shall be located such that all required bufferyard landscaping pursuant to Sections 9.5-375 through 9.5-379 of the City Code is installed and maintained;

(6) The structure shall be designed, developed and maintained such that the open space ratio required for the entire parcel pursuant to Sections 9.5-343 and 9.5-262 of the City Code is maintained;

(7) The structure shall be located in existing cleared areas before encroaching into areas of native vegetation. Removal of any native tree(s) and/or shrub(s) shall:

a. Be approved by the City Manager or designee prior to removal; and

b. Be successfully transplanted, if feasible, and if not, replaced with native species that are suitable for the habitat and are of comparable or more sensitive environmental status and size as approved by the City Manager or designee.

(d) An exception to the rear yard setback requirement shall be allowed for outdoor sport and recreational accessory structures such as, but not limited to, non-enclosed decks, gazebos, pools, spas, permanent barbecues, storage sheds and playground equipment, which are allowed within the rear yard setback. These structures are subject to the following restrictions:

(1) The entire parcel must be brought into compliance with the stormwater management criteria set forth in the Plan and this Chapter;

(2) If possible, all accessory structures shall be located in developable areas outside of the setback area before encroaching into the required setback area;

(3) All accessory structures within the rear yard setback must maintain a minimum five (5) foot setback from each side property line within the rear yard setback;

(4) Stormwater and pollutant runoff is directed and maintained on-site;

(5) Pools, spas, and similar pollutant sources shall not discharge directly onto the subject or adjacent parcels;

(6) Whenever feasible, structures should be made of permeable materials to allow the infiltration of stormwater runoff;

(7) All structures must be detached from the principal structure;



(8) The accessory structure is for the sole use of the upland resident, where a residential use is established;

(9) Enclosed accessory structures shall only be utilized for storage and shall not exceed eight (8) feet above the existing grade and shall be no more than 120 square feet in area as measured from the drip line;

(10) Gazebos and tiki huts must be pile supported and only insect type screening material is allowed to enclose the sides; no walls are allowed;

(11) The accessory structure shall be located such that all buffervard landscaping required pursuant to Sections 9.5-375 through 9.5-379 of the City Code is installed and maintained;

(12) Where no other structures are present, swales, berms and/or vegetation shall be used to control runoff; however, native vegetation shall not be removed to install swales or berms;

(13) Accessory structures shall be located in existing, cleared areas before encroaching into areas of native vegetation. Removal of any native tree(s) and/or shrub(s) shall:

a. Be approved by the City Manager or designee prior to removal; and

b. Be successfully transplanted, if feasible, and if not, replaced with native species that are suitable for the habitat and are of comparable or more sensitive environmental status and size as approved by the City Manager or designee.

In no event shall the total, combined area of all structures within the rear yard setback area occupy more than twenty percent (20%) of the required setback area for SS, SR, SRL,

UR, URM and URML Land Use Districts or any Land Use District which requires a twenty-five (25), ten (10) or fifteen (15) foot rear yard setback. In no event shall the total combined area of all structures within the rear yard setback occupy more than forty percent (40%) of the required rear yard setback area for IS and IS-D or any Land Use District which requires a twenty (20) foot rear yard setback. Other than that allowed by Section 9.5-281 of the City Code, no structures shall be allowed within the rear yard setback in OS, MN and NA Land Use Districts.

(1) A Special Approval by the City Manager or designee is required for any parcels with two hundred (200) or more linear feet of rear property line.

(2) Accessory structures in the rear yard setback shall be designed, developed and maintained such that the open space ratio required for the entire parcel pursuant to Sections 9.5-262 and 9.5-343 of the City Code is maintained.

(3) For the purposes of this Section, linear feet of property line shall be measured as a straight line from the rear corner of one side property line to the rear corner of the other side property line. Deviations from this procedure to accommodate irregular property lines shall require written approval of the City Manager or designee.

(f) For established residential uses in I, MU, SC UC, DR, RV, CFA and CFSD Land Use Districts, a special approval by the City Manager or designee is required for any application for a development permit for such accessory structures within the rear yard setback. This approval procedure shall incorporate, among other criteria, requirements that such approval:

(1) Is consistent with any densities, intensities and uses of the Land Use District;

(2) Furthers the purposes of this Section;

(3) Is consistent with the general standards applicable to all such uses and structures;

- (4) Is consistent with the community character of the surrounding area;
- (5) Does not interfere with residential or public recreational uses on adjacent

uplands:

- (6) Complies with the restrictions contained in this Section; and
- (7) Is for the use of the upland resident only.

The City Manager or designee may approve designs that address unique circumstances such as odd shaped lots, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the Manager's written finding that the proposed design furthers the purpose of this Section and the objectives, goals, and policies of the Comprehensive Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances.

(h) For commercial or public uses, the City Manager or designee and the Planning Commission may approve deviations from the requirements of this Section as part of a minor or major conditional use permit. Such approval may include additional structures or square footage of structures or uses. Such additional uses include, but are not limited to, pedestrian walkways, public facilities, monuments, statues or informational kiosks.

All non-conforming structures lawfully existing within the rear yard setback may be rebuilt in the same footprint provided that there will be no adverse impacts on stormwater runoff, and the entire parcel is brought into compliance with the stormwater management criteria of the Plan and this Chapter.

**Section 4. Shoreline Setback.** Section 9.5-286 of the City Code is hereby amended to read as follows:

**Sec. 9.5-286. Shoreline setback.**

(a) All principal structures shall be setback from shorelines as follows:

(1) All principal structures shall be setback twenty (20) feet, as measured from mean high water line ("MHWL"), for manmade canals, channels, basins and lawfully altered shorelines.

(2) On open water, all principal structures shall be setback fifty (50) feet, as measured from the MHWL or the landward extent of the mangroves whichever is further landward, for all unaltered and unlawfully altered shorelines.

(3) On open water, all principal structures shall be setback thirty (30) feet, as measured from the landward extent of the mangroves, where the original slope landward of the water has been significantly altered by filling but a mangrove fringe exists that is contiguous from side lot line to side lot line and is at least ten (10) feet wide at the root zone.

(4) On open water where the original slope landward of the water has been significantly altered by filling where no bulkhead, significant armoring or mangrove fringe exists that is contiguous from side lot line to side lot line, all principal structures shall be setback thirty (30) feet, as measured from the MHWL, provided that native vegetation exists or is planted and maintained in at least a ten (10) foot width across the entire shoreline; otherwise the setback shall be fifty (50) feet, as measured from the MHWL.

(5) On in-fill lots along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL or the landward extent of the mangroves, the City Manager or designee may evaluate the community character, the presence or absence of environmental features, and the setbacks on adjacent developed properties within two parcels on either side

of the proposed development, and may allow principal structures to be setback as far as is practicable or in line with adjacent principal structures. In no event shall the setback be less than twenty (20) feet. On shorelines where the existing pattern of setback is greater than thirty (30) feet, the greater setback shall apply.

(b) An exception to this shoreline setback requirement shall be allowed only for utility pilings, fences, docks, boat ramps, boat slips, boat shelters, seawalls, retaining walls, riprap, bulkheads, walkways, and outdoor sport and recreational accessory structures such as, but not limited to, non-enclosed decks, gazebos, pools, spas, permanent barbecues, or fish cleaning tables, which are allowed within the shoreline setback. These structures are subject to the restrictions contained in this Section and the Shoreline Environmental and Development Criteria set forth in Section 9.5-289 of the City Code.

(1) All permissible accessory structures within the shoreline setback other than docks, docking facilities, utility pilings, fences, boat ramps, boat slips, boat shelters, seawalls, retaining walls, riprap, bulkheads, walkways, water observation platforms and water observation walkways must maintain a twenty-five (25) foot setback from the MHWL or the landward extent of the mangroves, whichever is further landward, on all unaltered shorelines.

(2) All permissible accessory structures within the shoreline setback other than docks, docking facilities, utility pilings, fences, seawalls, retaining walls, riprap, walkways, water observation platforms and water observation walkways must maintain a fifteen (15) foot setback from the landward extent of the mangroves on all significantly filled shorelines on open water with a contiguous mangrove fringe.

(3) On all significantly filled shorelines on open water where there is no significant armoring or bulkhead, if native vegetation exists or is planted and maintained in at least a ten (10) foot wide buffervard across the entire shoreline, all pennittable accessory structures within the shoreline setback other than docks, docking facilities, utility pilings, fences, seawalls, retaining walls, riprap, walkways, water observation platforms and water observation walkways must maintain a fifteen (15) foot setback from the landward edge of the shoreline bufferyard; otherwise, for scarified parcels all permittable accessory structures must maintain the setbacks established for unaltered shorelines on open water.

(4) Pools, spas and any enclosed structure over six (6) feet tall shall be set back ten (10) feet from MHWL along lawfully altered shorelines.

A minimum five (5) foot side yard setback shall be maintained for all structures within the shoreline setback area except for docks, sea walls, bulkheads, retaining walls, riprap, fences, boat ramps, boat shelters or fish cleaning tables.

**Section 5. Bulkheads, Seawalls, Riprap and Fences.** Section 9.5-288 of the City Code is hereby repealed.

**Section 6. Shoreline Environmental and Development Criteria** Section 9.5-28 of the City Code is hereby amended to read as follows:

**Sec. 9.5-289. Shoreline Environmental and Development Criteria.**

(a) The purpose of this Section is to allow for reasonable access between the land and water, provide secure boat storage, assure good water quality, provide a consistent community character, protect structures from the effects of long-term sea level rise, protect beaches and shores from erosion, avoid adverse impacts on navigation, and protect marine and terrestrial natural resources.

(b) As a condition of the development approval for any accessory structure located within the shoreline setback area, the entire parcel must be brought into compliance with the stormwater management criteria of the Plan and this Chapter.

If possible, all accessory structures shall be located in the developable areas outside of the setback area before encroaching into the required setback area.

(d) In no event shall the total combined area of all upland accessory structures within the shoreline setback occupy more than sixty percent (60%) of the required shoreline setback area along manmade canals, channels, basins and for lawfully altered shorelines. In no event shall the total combined area of all upland structures within the shoreline setback occupy more than thirty percent (30%) of the required shoreline setback area for all other shorelines.

(1) A Special Approval by the City Manager or designee is required for all shorelines, which exceed two hundred (200) linear feet of shoreline.

(2) All accessory structures in the shoreline setback area shall be designed, developed and maintained such that the open space ratio required for the entire parcel pursuant to Sections 9.5-262 and 9.5-343 of the City Code is maintained.

(3) For the purposes of this Section, linear feet of shoreline shall be measured as a straight line from the MHWL on one side property line to the MHWL on the other side property line. Deviations from this procedure to accommodate irregular shorelines, jetties, groins, or basins shall require written approval of the City Manager or designee.

All accessory structures developed within the shoreline setback area shall be designed, located, constructed, used and maintained such that:

(1) Stormwater and pollutant runoff is directed away from surface waters;

(2) Pools, spas, fish cleaning tables and similar pollutant sources shall not discharge directly into surface waters;

(3) Whenever feasible accessory structures should be made of permeable materials to allow the infiltration of stormwater runoff;

(4) All accessory structures must be detached from the principal structure;

(5) All accessory structures shall be located such that all bufferyard landscaping required pursuant to Sections 9.5-375 through 9.5-379 of the City Code is installed and maintained;

(6) The height of the structure shall be reasonable for the type of structure proposed, however, no accessory structure within the shoreline setback area shall exceed twenty-five (25) feet above the existing grade;

(7) Where no other structures are present, swales, berms and/or vegetation shall be used to control runoff; however, native vegetation shall not be removed to install swales or berms;

(8) The applicant shall comply with the outdoor lighting criteria set forth in Sections 9.5-391 and 392 of the City Code, and where applicable, all marine turtle nesting habitat requirements set forth in Chapter 13 of the City Code;

(9) All fuel dispensing pumps located in the shoreline setback area must be equipped with a spill proof nozzle or other acceptable device designed for prevention of fuel overflow. The fuel-dispensing pump must be at a lawfully existing marina and all applicable Federal, State, fire and environmental regulations must be met; and



(10) All accessory structures shall be located in existing cleared areas before encroaching into areas of native vegetation. Removal of any native tree(s) and/or shrub(s) shall:

a. Be approved by the City Manager or designee prior to removal;

b. Be successfully transplanted, if feasible, and if not, replaced with native species that are suitable for the habitat and are of comparable or more sensitive environmental status and size as approved by the City Manager or designee.

(f) All development at or below the MHWL shall be placed, located, designed, constructed, and mitigated in conformance with the applicable rules, regulations and Code provisions of the Army Corps of Engineers ("ACOE"), the Florida Department of Environmental Protection ("FDEP"), and the City. Approvals or exemption letters by the ACOE and FDEP shall accompany all City development applications for any proposed development at or below the MHWL.

Walkways shall be permitted provided that:

(1) Any upland walkway within the shoreline setback landward of MHWL serving non-residential uses or residential uses of more than three (3) dwelling units shall not exceed eight (8) feet in width;

(2) Any upland walkway within the shoreline setback landward of MHWL serving all other uses shall not exceed five (5) feet in width;

(3) All walkways and accessways extending over mangroves, wetlands, or submerged lands shall be supported by pilings and shall not exceed four (4) feet in width;

(4) All walkways shall be approximately perpendicular to the shoreline. The City, in accordance with the Special Approval process set forth herein, may permit a non-perpendicular walkway.

(h) Non-covered, non-enclosed, open decks shall be permitted on the roof of any boat shelter or gazebo along an altered shoreline provided that:

- (1) The roofdeck must provide side handrails;
- (2) The lower portion of the roofdeck on any boat shelter or any gazebo, which extends beyond MHWL, shall be no less than twelve (12) feet above MHWL;
- (3) The highest point of the roofdeck on any boat shelter or gazebo shall be no more than twenty-five (25) feet above the existing grade or the MHWL;
- (4) Any gazebo that extends beyond MHWL shall not exceed one hundred (100) square feet in area as measured by the dripline.

(i) Boat shelters shall be permitted, provided that:

① The boat shelter shall be erected only over a cut-in boat slip or ramp and may not extend into the adjacent waterbody beyond the mouth of the cut-in-slip or ramp, nor extend over any mangroves, seagrasses or hardbottom communities;

(2) The roof and supporting members of a boat shelter shall not extend more than two (2) feet beyond the landward perimeter of the boat slip or ramp;

(3) Boat shelters must be pile supported and only insect type screening material is allowed to enclose the sides; no walls are allowed.

(j) Bulkheads, seawalls or riprap shall be permitted, provided that:

(1) Bulkheads, seawalls or riprap may be allowed on vacant parcels where it is demonstrated that their purpose is necessary for erosion control. Seawalls may have a cap of two (2) feet in width.

(2) Bulkheads, seawalls or riprap do not constitute a docking facility. All elements, such as lifts, davits or cleats, which constitute a docking facility, must comply with the requirements of this Section for docking facilities.

(3) Vertical seawalls or bulkheads shall be permitted only to stabilize severely eroding shorelines and only on manmade canals, channels, or basins. Such seawalls or bulkheads shall be permitted only if native vegetation and riprap with filter cloth is not a feasible means to control erosion. No new vertical seawalls or bulkheads shall be permitted on open water.

(4) Existing, deteriorated seawalls and bulkheads on any shoreline may be repaired or replaced. Repairs or replacements of non-conforming vertical seawalls or bulkheads on open water are exempt from the non-substantial improvements limitations of non-conforming structures, however, repairs or replacements must maintain the existing footprint to the maximum extent practical and must be limited to the extent necessary to maintain the integrity of the upland. Such repairs or replacements on unaltered shorelines and open water shall be permitted only if riprap with filter cloth is not a feasible alternative.

(5) Whenever feasible, riprap, bulkheads and seawalls should be placed landward of any existing mangroves. Native upland, wetland, and aquatic biotic communities shall be preserved to the maximum extent possible.

(6) Wherever feasible, riprap shall be placed at the base of solid seawalls to dissipate wave energy and provide substrate for marine organisms.

(7) The design of the permitted riprap, bulkhead or seawall system must include a minimum six (6) inch retention swale, berm or curb directly landward of the proposed system.

(8) No seawalls, bulkheads, riprap or other shoreline hardening structures shall be permitted on or waterward of any portion of any beach berm complex which is known to be or is potential nesting area for marine turtles. Nesting areas for marine turtles are those areas identified as such on the City's Protected Animal Species Maps. Within mapped nesting areas, the City Manager or designee may in cooperation with the Florida Department of Environmental Protection and U.S. Fish and Wildlife Service, determine that specific segments of shorelines have been previously, lawfully altered to such a degree that suitable nesting habitat for marine turtles is no longer present. In such cases, the City Manager or designee in cooperation with the Florida Department of Environmental Protection may recommend reasonable measures to restore the nesting habitat. If such measures are not feasible, the setback requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

(9) Shoreline stabilization or beach renourishment projects on open water may be approved only upon a determination by the City Manager or designee that the project has a valid public purpose that furthers the objectives, goals and policies of the Comprehensive Plan. Such projects must have all applicable local, State and Federal permits prior to submittal to the City.

(k) Boat ramps shall be permitted, provided that:

(1) All boat ramps shall be located and designed so as not to create a setback nonconformity for existing structures from the new MHWL line created by the ramp.

(2) All boat ramps shall be confined to shorelines of manmade canals, channels, and basins with little or no native vegetation.

(3) The width of boat ramps, including side slopes, shall be limited to fifteen (15) feet, except that ramps serving commercial uses, public uses, or more than three dwelling units may be thirty-five (35) feet in width.

(4) All above-water ramp, side slope or wall structures shall be located landward of the original MHWL.

(5) A maximum of two accessory docks, abutting either or both sides of the ramp, are allowed. These docks may extend beyond MHWL but shall comply with all requirements of this Section.

(6) Construction of a boat ramp shall not involve any filling of surface waters except for the minimum amount needed for the actual boat ramp surface, side slopes, walls or pilings for accessory docks. Walls may not exceed two (2) feet in width.

(7) Dredging shall be limited to the minimum amount necessary to construct a boat ramp for a single family residence. Dredging for public boat ramps should not exceed one hundred (100) cubic yards. No dredging of submerged grass beds, or hard bottom communities shall be allowed.

(8) All boat ramps shall be designed and maintained to control stormwater runoff from the upland property.

(1) Docking facilities shall be permitted, provided that:

① Docks shall not exceed ten percent (10%) of the width of the waterbody as measured laterally across the waterbody from the point of mean low water (“MLW”) of the proposed location of placement to the opposing point of MLW.

(2) No dock together with a moored vessel, lift or mooring piles shall obstruct more than twenty-five percent (25%) of the navigable portion of a man-made waterbody.

(3) A benthic survey shall accompany all applications for expansion of, or construction of, new docks on open water. Such survey must, at a minimum, include:

- a. a site plan;
- b. the location of the proposed structure;
- c. location of any existing seagrass beds or hard bottom communities;
- d. a description of the bottom substrate;
- e. Identification of dominant species within any benthic community

identified in the survey within a 50-foot radius of the proposed development. This 50-foot radius shall be indicated on the site plan required by this subsection.

(4) Docking facilities shall not terminate over submerged lands which are vegetated with seagrasses or hard bottom communities, except as may be permitted by the FDEP and ACOE.

(5) Any docking facility shall meet at least one of the following conditions:

a. At least four (4) feet water depth at MLW at the terminal end of the a docking facility, and continuous access to open water; or

b. A docking facility that extends across a full ten percent (10%) of the width of any body of water may terminate in water less than four (4) feet at MLW if this water depth occurs within five (5) horizontal feet of the terminal end of the docking facility such that the centerline of an average vessel will rest in water of adequate depth, and continuous access to open water is available; or

C Docking facilities may be developed on the shoreline of lots in a subdivision that was approved before September 15, 1986, if the docking facility is located in a channel or canal that was dredged before September 15, 1986, and if there is a MLW depth of at least four (4) feet at the terminal end of the docking facility. Such docks shall not exceed ten percent (10%) of the width of the channel or canal.

(6) All docks with boat lifts, davits or similar lifting mechanisms shall provide cleats, rings, or similar features that can be used to tie down the vessel when it is out of the water in order to stabilize the vessel during high wind.

(7) Any docking portions extending over water no shallower than four (4) feet at MLW may be supported by floats that are secured to piles with rings or cleats;

(8) On altered shorelines landward of a seawall, revetment or manmade canal or channel, a dock may run the entire length of the shoreline, parallel to the water's edge, provided that:

a. The landward edge of the dock is located entirely on the upland shoreline and no walkway is needed to provide access to the dock.

b. All portions of the dock that extend over submerged lands are cantilever beam or pile supported.

C Docks serving commercial uses, public uses, or more than three dwelling units do not exceed ten (10) feet in width and all other docks do not exceed eight (8) feet in width.

d. The width of any dock between boat davits may be expanded to thirteen (13) feet for a distance of no more than thirty-five (35) feet along: the

shoreline. For single-family residences only one such expanded area shall be allowed, between davits, for every lot or for every one hundred (100) linear feet of shoreline length. Two such expanded areas shall be allowed for duplex dwelling units.

(9) Where a contiguous mangrove fringe exists along the entire shoreline, then a dock with a walkway perpendicular to the shoreline, such as a “T” or “L” dock, shall be the primary design permitted and shall be designed as follows:

a. The portion of the dock parallel to the shoreline may run the entire shoreline length of the parcel and shall not exceed five (5) feet in width.

b. The dock and walkway shall be located so as to avoid or minimize covering mangroves.

c. The walkway connecting the dock to the shore shall not exceed four (4) feet in width. One such walkway shall be allowed for every one hundred (100) feet of shoreline length or fraction thereof (for example, seventy-five (75) feet of shoreline may have one walkway and one hundred and one (101) feet of shoreline may have two).

d. Where a mangrove fringe exists along the shoreline and a “T” or “L” style dock would extend over more than ten percent (10%) of the width of the waterbody, the City Manager or designee may approve an alternative design not to exceed five (5) by twenty (20) feet in dimensions. Such alternate design shall only have the minimum deviations from this subsection to address this unique situation.

(10) Pier type docks shall be permitted, provided that:



a. Such structures are oriented approximately perpendicular to the shoreline;

b. Such structures are located in an existing break in the mangroves or shoreline vegetation; however, if no such break exists, an opening, no more than four (4) feet wide and eight (8) feet above the finished grade of the deck, may be cut through the mangroves or shoreline vegetation.

c. Such structures are no longer than twice the linear shoreline frontage of the parcel or one hundred (100) feet, whichever is less. For purposes of this subparagraph, dock length shall be measured from MLW out to the furthest waterward extension of the dock.

d. Reflective navigation indicators shall be located every fifty (50) feet and on both sides of the terminal platform.

e. If proposed, the terminal platform of any dock shall be no wider than eight (8) feet in one dimension and does not exceed a total of one hundred and sixty (160) square feet in area. The terminal platform may include stairways for swimming access provided that all stairways are contained within the square footage allowed for the terminal platform. The terminal platform may include a non-enclosed gazebo that does not exceed one hundred (100) square feet in area.

f. An administrative long dock variance may be granted by the City Manager or designee to allow the minimum relaxation of the length restriction set forth in subsection c as is necessary to provide the upland owner with access to adequate water depths specified for docking facilities. Such administrative long dock variance shall only be granted based on a written determination by the City Manager

or designee that the proposed dock will be consistent with the community character of the surrounding area; will not interfere with public recreational uses in or on adjacent waters; and will pose no navigational or safety hazard. Prior to issuance of the long dock variance, the City Manager or his designee shall give the applicant notice of the City's intent to issue the long dock variance. Thereafter, in accordance with the provisions of Section 9.5-45(d) of the Code, the applicant shall provide notice to adjacent property owners of the City's intent to issue the long dock variance. Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on the long dock variance may be requested in writing to the City Manager or his designee, by the applicant, an adjacent property owner or an aggrieved or adversely affected property owner located within three hundred (300) feet along the shoreline of the property that is subject to the long dock variance. If a public hearing is requested, in accordance with the provisions of Section 9.5-521(e) of the Code, the City shall schedule a public hearing of the Planning Commission. The provisions of Article XII of this Chapter shall govern any such hearing, and the person requesting the public hearing shall be responsible for providing notice of the hearing in accordance with the provisions of Section 9.5-45(a) of the Code. The City Manager or his designee shall issue the long dock variance if a public hearing is not requested in accordance with this subsection.

(m) The following specific types of structures, or portions thereof, extending over mangroves, wetlands, or submerged lands, shall be permitted only as follows:

- (1) Water access walkways shall be permitted, provided that such structures are:
  - a. Oriented approximately perpendicular to the shoreline;

b. Designed to terminate in water no deeper than six (6) inches at MLW or extend no further than 10 feet from the waterward extent of mangroves;

c. Designed so that the decking is elevated at least two (2) feet above MHWL;

d. A maximum of four (4) feet in width and do not include a terminal platform or gazebo or roof structures; and

e. Designated by signs of at least one (1) square foot each to be placed on each side of the structure that states "No Mooring of Motorized Vessels Allowed".

f. Does not terminate over seagrasses or hardbottom communities.

(2) Water observations platforms shall be permitted, provided that such structures are:

a. Oriented approximately perpendicular to the shoreline;

b. Designed to terminate in water no deeper than six (6) inches at MLW or begin the terminal platform no further than 10 feet beyond the waterward extent of mangroves;

c. Designed so that the top of the decking, including the terminal platform, must be elevated at least five (5) feet above MHWL;

d. Designed with a terminal platform that does not exceed one hundred and sixty (160) square feet. The terminal platform may include a non-enclosed gazebo that does not exceed one hundred and sixty (160) square feet.

e. Shall be designed with handrails on all sides and designated by signs of at least one (1) square foot each to be placed on each side of the structure that states "No Mooring of Motorized Vessels Allowed."

(n) Special approvals:

(1) For structures serving commercial uses, public uses, more than three dwelling units, or designed for mooring four (4) or more vessels, the City Manager or designee and the Planning Commission may approve deviations from the requirements of this Section as part of a minor or major conditional use permit. Such approval may include additional structures or square footage of structures or uses. Such additional uses are, but not limited to, waterfront dining; areas, pedestrian walkways, public facilities, monuments or statues, informational kiosks, and water-dependent marina uses. Any such development shall make adequate provision for a water quality monitoring program for a period of five (5) years after the completion of the development and as a condition of development shall provide stormwater runoff controls for the entire site pursuant to the stormwater management standards of this Chapter. The approval procedure shall incorporate, among other criteria, requirements that such approval:

(a) Is consistent with the densities, intensities and permitted uses of the applicable land use district;

(b) Furthers the purposes of this Section;

(c) Is consistent with the general standards applicable to all such uses and structures;

(d) Is consistent with the surrounding community character;

(e) Does not interfere with public recreational uses in or on adjacent waters or uplands;

(f) Does not pose a navigational hazard;

All structures shall be located such that all bufferyard landscaping required pursuant to Sections 9.5-375 through 9.5-379 of the City Code be installed and maintained.

(h) All structures shall be located in existing cleared areas before encroaching into areas of native vegetation. Removal of any native tree(s) or shrub(s) for development shall be approved prior to removal and shall be successfully transplanted or replaced with native species that are suitable for the habitat and are of comparable or more sensitive environmental status and size as approved by the City Manager or designee.

(2) For structures serving three or fewer dwelling units the City Manager or designee may approve designs that address unique circumstances such as odd shaped lots or shorelines, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the City Manager or designee's written finding that the proposed design furthers the purpose of this Section and the objectives, goals and policies of the Comprehensive Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances.

(3) Non-conforming docks or docking facilities lawfully existing along the shoreline of manmade canals, channels, or basin, or serving three or fewer dwelling units on any shoreline shall be exempt from the non-substantial improvements limitations in order to

expand or extend the structure to reach the water depths specified for docking facilities. Any such modifications shall comply with each and every other requirement of this Section.

(4) All non-conforming accessory structures lawfully existing within the shoreline setback along manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, may be rebuilt in the same footprint provided that there will be no adverse impacts on stormwater runoff, navigation or turtle nesting habitat and the entire parcel is brought into compliance with the stormwater management standards of this Chapter.

(o) Notwithstanding the provisions above, no development other than pile supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within fifty (50) feet of any portion of any beach berm complex which is known to be or is a potential nesting area for marine turtles. All such development shall comply with Chapter 13, Article 4 of the City Code and the following:

(1) The fifty (50) foot setback shall be measured from either the landward toe of the most landward beach berm or from fifty (50) feet landward of MHWL, whichever is less. The maximum total setback shall be one hundred (100) feet from MHWL.

(2) Known or potential nesting area for marine turtles are those areas identified as such on the City's Protected Animal Species Maps. Within mapped nesting areas, the City Manager or designee may, in cooperation with the Florida Department of Environmental Protection, determine that specific segments of shorelines have been previously, lawfully altered to such a degree that suitable nesting habitat for marine turtles is no longer present. In such cases, the City Manager or designee in cooperation with the Florida Department of Environmental Protection may recommend reasonable measures to

restore the nesting habitat. If such measures are not feasible, the specific requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

(3) Any such dock or walkway shall be designed to the following criteria to minimize adverse impacts on marine turtles.

a. The structure shall have a minimum horizontal distance of four (4) feet between pilings or other upright members.

b. The structure shall have a minimum clearance of three (3) feet above grade.

c. If stairs or a ramp with less than the minimum three (3) feet clearance above grade is required, such stairs or ramp shall be enclosed with vertical barriers no more than two (2) inches apart.

**Section 8.** **Lots.** Section 9.5-299 of the City Code is hereby amended to read as follows:

**Sec. 9.5-299. Lots.**

\*\*\*

~~(e) — Corner lots for residential uses shall have a front yard for both streets. Setbacks for nonfrontal yards shall not exceed setback totals as prescribed in section 9.5-281.~~

**Section 9.** **Variances.** Section 9.5-523 of the City Code is hereby amended to read as follows:

**Sec. 9.5-523. Variances.**

\*\*\*

(b) ~~Variances may be granted from the open spaces ratio requirements of sections 9.5-267 and 9.5-269 according to the standards and procedures set forth in subsection e and f of this section.~~ However, no variance shall be granted under this Section if such variance would result in an open space ratio less than that required by Section 9.5.343 of the City Code.

\* \* \*

**Section 10. Repeal of Conflicting Provisions.** The provisions of the City Code, as existing immediately prior to the adoption of this Ordinance are hereby repealed.

**Section 11. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and 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 12. Inclusion in the Code.** It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 13. Approval by the State Department of Community Affairs.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.



**Section 14.** **Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

The foregoing Ordinance as offered by Councilman Bartus, who moved for its adoption. This motion was seconded by Councilman Johnson and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

PASSED on first reading this 18th day of December, 2001.

The foregoing Ordinance as offered by Councilman Greenman, who moved for its adoption. This motion was seconded by Councilman Bartus, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Absent</u>

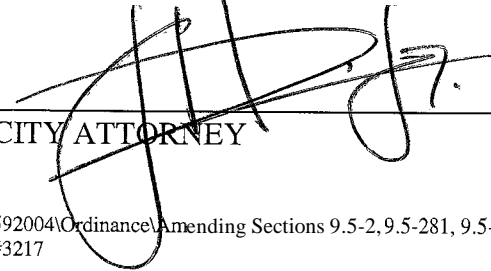
PASSED AND ADOPTED on second reading this 8th day of January, 2002.

  
ROBERT MILLER, MAYOR

ATTEST:

*Katherine V. Selchan*  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
CITY ATTORNEY

592004(Ordinance)Amending Sections 9.5-2, 9.5-281, 9.5-286, 9.5-289 6th Draft  
#3217

**SCANNED**

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND DEVELOPMENT  
REGULATIONS ADOPTED BY  
CITY OF MARATHON ORDINANCE NO. 02-01-06

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**FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat., and § 380.0552(9), *Fla. Stat.* (2001), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

**FINDINGS OF FACT**

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Marathon is a local government within the Florida Keys Area.
2. On January 28, 2002, the Department received for review City of Marathon Ordinance No. 02-01-06 which was adopted by the City of Marathon City Council on January 8, 2002 ("Ord. 02-01-06").
3. Ord. 02-01-06 amends the City's Land Development Regulations to address nearshore water quality problems related to the improper management of stormwater by providing regulations for minimum yard size, and by establishing shoreline setbacks and providing regulations for the activities within the shoreline setback area. It also provides standards for the construction of seawalls and docks.
4. Ord. 02-01-06 is consistent with the City's 2010 Comprehensive Plan.

## CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6) and (11), Fla. Stat., and § 380.0552(9), Fla. Stat. (2001).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, Fla. Stat. (2001) and Rule 28-29.002 (superseding Chapter 27F-8), Fla. Admin. Code.

7. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2001). The regulations adopted by Ord. 02-01-06 are land development regulations.

8. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the "Principles") set forth in § 380.0552(7), Fla. Stat. See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 02-01-06 promotes and furthers the following Principles:

(a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.

(b) To protect shoreline and marine resources including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(e) To limit the adverse impacts of development on the quality of water throughout the Florida Keys.

(f) To enhance natural scenic resources, promote aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.

(h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities;

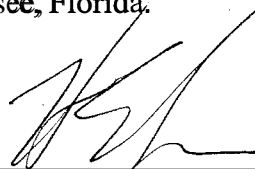
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

10. Ord. 02-01-06 is not inconsistent with the remaining Principles. Ord. 02-01-06 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-01-06 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



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SONNY TIMMERMAN, DIRECTOR  
Division of Community Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

## NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS *ARE* AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

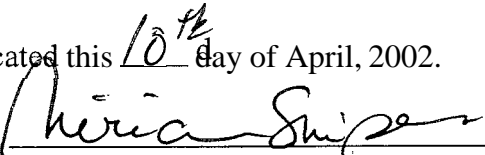
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

**YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.**

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 10<sup>th</sup> day of April, 2002.

  
for Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Robert K. Miller  
Mayor  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Katherine V. Selchan  
City Clerk  
City of Marathon  
210 University Drive  
Coral Springs, Florida 33071

Craig Wrathell  
City Manager  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

John R. Herin, Jr.  
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.  
City Attorneys  
City of Marathon  
2665 South Bayshore Drive, Suite 420  
Miami, Florida 33133

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee  
Rebecca Jetton, DCA Florida Keys Field Office  
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee