

ORDINANCE No. 02-07-14

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS RELATING TO WIRELESS COMMUNICATIONS FACILITIES; SPECIFICALLY AMENDING SECTIONS 9.5-434.1 THROUGH 9.5-434.5 AND CREATING SECTIONS 9.5-434.6 THROUGH 9.5-436.16; AND PROVIDING FOR THE REPEAL OF CODE PROVISIONS INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING 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 DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, residents and visitors to the City of Marathon (the “City”) benefit from the provision of Wireless Communications Services;

WHEREAS, there is a need to balance the potential adverse effects on the community of Wireless Communications facilities with the benefits of this service;

WHEREAS, the Telecommunications Act of 1996 preserves the authority of local governments to regulate the placement, construction, and modification of Wireless Communications facilities while placing limitations on that authority;

WHEREAS, in accordance with Section 166.041, Florida Statutes, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the existing wireless communications facilities regulations LDRs; 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 Principles for Guiding development of the Florida Keys Area of Critical State Concern (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. **Amendment to the Code.** Sections 9.5-434.1 through 9.5-434.5 of the City Code (the "Code") are hereby repealed and replaced in their entirety to read as follows:

Sec. 9.5-434.1. Purpose and Intent. The purpose and intent of this Division is to:

(a) Regulate the placement, construction and modification of new Wireless Communications Towers and Facilities without unreasonably discriminating among providers of functionally equivalent personal wireless services or prohibiting personal wireless services in the City;

(b) Encourage the Collocation of Antennas, Ancillary Structures and associated Equipment Enclosures on existing Wireless Communications Towers in order to minimize the visual, aesthetic, public safety, natural environment and wildlife impacts of new Towers, and to reduce the need for additional Towers within the City;

(c) Encourage the placement of Antennas, Ancillary Structures and Equipment Enclosures on existing buildings in order to minimize the visual, aesthetic,

public safety, natural environment and wildlife impacts of new Towers, and to reduce the need for additional Towers within the City;

(d) Encourage the Replacement of existing Wireless Communications Facilities through the use of Collocation; and

(e) Minimize the visual, environmental and safety impacts of new Wireless Communications Facilities to the City by establishing standards for their location and structural integrity, in light of the location of the City within a high velocity hurricane zone to ensure compatibility with surrounding land uses and preservation of the City's community character.

Sec. 9.5-434.2. Definitions. For the purposes of this division, the terms and phrases listed below shall have the following meanings:

(A-1) *Ancillary Structures* means forms of development associated with a Wireless Communications Facility, including but not limited to: foundations, concrete slabs on grade, guy wire anchors, generators, and transmission cable supports, excluding Equipment Enclosures. Ancillary Structures are not considered commercial floor area.

(A-2) *Anti-climbing Device* means a piece or pieces of equipment which are either attached to a Tower, or which are free-standing and are designed to prevent people from climbing the structure. These devices may include but are not limited to fine mesh wrap around structure legs, "squirrel-cones", the removal of climbing pegs on Monopole structures, or other approved devices, but excluding the use of barbed wire.

(A-3) *Attached Wireless Communications Facilities* means an Antenna (including dish Antennas) or Antenna Array that is attached to an existing building with an accompanying pole or device which attaches it to the building, transmission cables, and an Equipment Enclosure, which may be located either inside or outside of the existing building.

(A-4) *Antenna* means any apparatus designed for the transmitting and receiving of electromagnetic waves, which includes but is not limited to, telephonic, radio or television communications. Types of Antennas include, but are not limited to: omni-directional (whip) Antennas, sectorized (panel) Antennas, multi or single bay (FM and TV), yagie, or parabolic (dish) Antennas.

(A-5) *Antenna Array* means a single or group of Antennas and their associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support.

(C-1) *Collocation* means a situation in which two or more different Wireless Communications Service Providers place Antenna or Antennas on a common Tower.

(C-2) *Compatibility* or *Compatible* means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. Compatibility of land uses is dependent on numerous development characteristics which may impact adjacent or surrounding uses. These include: type of use, density, intensity, height, general appearance and aesthetics, odors, noise, smoke, vibration, traffic generation and nuisances.

Compatibility shall be measured based on the following characteristics of the proposed use or development in relationship to surrounding development in the immediate area:

(1) permitted uses, structures and activities allowed within the land use category;

(2) location, dimensions, height, and floor area ratio of the structure or Facility;

(3) location and extent of parking, access drives and service areas, where applicable;

(4) traffic generation, hours of operation, noise levels and outdoor lighting;

(5) alteration of light and air; and

(6) setbacks and buffers-fences, walls, landscaping and open space treatment.

(C-23) *Conical Zone* means an area which extends outward from the outer edge of the Horizontal Zone with a radius distance equivalent to five thousand two hundred eighty (5,280) feet.

(D-1) *Development Area* means the area occupied by a Wireless Communications Facility or an Attached Wireless Communications Facility, which may include the Tower area, Ancillary Structures, Equipment Enclosures, and access ways, fencing, landscape bufferyards or the Fall Zone are not considered Development Area for the purposes of this Division. and landscaping, and fall zone.

(E-1) *Equipment Enclosure* means any structure ~~above the base flood elevation~~ including: cabinets, shelters (pre-fabricated or otherwise), pedestals, and other similar structures used exclusively to contain equipment necessary for the transmission or reception of wireless communication signals not for the storage of equipment nor as habitable space.

(F-1) *Fall Zone* means the defined area in which a tower is designed to fall in the event of a structural collapse.

(G-1) *Geographic Search Area* shall mean the geographic area designated by an applicant for a Wireless Communications Facility and certified by a Radio Frequency Engineer that indicates an area inside or outside of the boundaries of the City in which the applicant must place additional Antennas in order to maintain existing or provide new Wireless Communications Services to its customers, but in no case covering less than a one-mile radius from a proposed site.

(G-2) *Guyed* means a style of Tower consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of guy wires which are connected to anchors placed in the ground or on a building. These structures can be mounted to a foundation which rests on or in the ground or on a building's roof.

(G-3) *Glide Path* means a ratio equation used for the purposes of limiting the overall height of vertical projections in the vicinity of private airports. The ratio limits each foot of height for a vertical projection based upon a horizontal distance measurement.

(H-1) *Horizontal Zone* means an area longitudinally centered on the perimeter of a private airport's runway which extends outward from the edge of the Primary Surface a distance equivalent to five thousand two hundred and eighty (5,280) feet.

(M-1) *Monopole* means a style of free-standing Tower which is composed of a single shaft usually composed of two (2) or more hollow sections which are in turn attached to a foundation. This type of Tower is designed to support itself without the use of guy wires or other stabilization devices. These structures are mounted to a foundation which rests on or in the ground or on a building's roof.

(P-1) *Primary Surface* means the area extending a distance of fifty (50) feet to both sides of the centerline of a private airport's runway, and running the distance of the runway.

(P-2) *City-owned Tower* means a Tower, appurtenances, Equipment Enclosures, and all associated Ancillary Structures used by the City for the purposes of transmission and reception of wireless communication signals associated with, but not limited to, public education, parks and recreation, fire and police protection, public works, and general governmental uses.

(R-1) *Radio Frequency Emissions* means any electromagnetic radiation or other communications signal emitted from an Antenna or Antenna-related equipment on the ground, Tower, building, or other vertical projection.

(R-2) *Radio Frequency Engineer* shall mean a person engaged by an applicant or the City capable of certifying the geographic location requirements of an applicant for approval of a Wireless Communications Facility for the placement

of Antennae based upon longitude and latitude coordinates, existing infrastructure, available technology, and call demand.

(R-3) *Replacement* means the construction of a new Tower built to replace an existing Tower.

(S-1) *Satellite Earth Station* means a single or group of satellite parabolic (or dish) Antennas, with one or more having a diameter greater than forty (40) inches or any size parabolic Antenna mounted on a mast of twelve (12) feet or greater in height, including any associated separate Equipment Enclosures necessary for the transmission or reception of Wireless Communications signals with satellites.

(S-2) *Self Supporting* means a style of free-standing Tower which consists of an inverted truss assembly or other assembly designed to support itself without the use of guy wires or other stabilization devices. These structures are typically composed of three (3) or four (4) legs which rest upon individual foundations and are held together with bracing. These structures can be mounted to a foundation which rests on or in the ground or on a building's roof.

(S-3) *Stealth Wireless Communications Facility* means a structure that is not readily identifiable as an Tower and is ~~or~~ designed to be compatible with existing and proposed uses on a site. The structure may or may not have a secondary function (i.e. church steeple, bell tower, spire, clock tower, cupola, light standard, flagpole, etc.).

(T-1) *Temporary Tower* means a facility that is designed and constructed to serve, on a temporary basis, as a means of supporting Antennas and is used

typically to provide emergency wireless communications services or to provide wireless communications service to special events.

(T-2) *Tower* means a vertical projection composed of metal, wood, or other substance mounted to a foundation which rests on or in the ground or on a building's roof that is for the express purpose of accommodating Antennas at a desired height above grade. Towers may be either Guyed, Self-Supporting (lattice), Monopoles, or in some other configuration. Any device which is used to attach Antennas to an existing building as part of an attached Wireless Communications Facility shall be excluded from the definition of and regulations applicable to Towers unless otherwise provided herein. Towers along with their supporting ancillary structures and equipment cabinets are not considered commercial floor area.

(W-1) *Wireless Communications Facility (WCF) or Facility* means any unmanned facility for the transmission and reception of radio frequency signals, usually consisting of an Antenna or group of Antennas, transmission cables, and Equipment Enclosures, and may include a Tower. The following developments shall be considered a Wireless Communications Facility: Developments containing new or existing Towers, City-owned Towers, Replacement Towers, Collocations on existing Towers, Attached Wireless Communications Facilities, Stealth Wireless Communications Facilities, and Satellite Earth Stations.

(W-2) *Wireless Communications Services Provider or Provider* means any wireless service provider as defined in the Federal Telecommunications Act of 1996 which includes Federal Communications Commission licensed commercial

wireless telecommunications services such as but not limited to cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, radio and television broadcast services, and similar services that currently exist or that may be developed in the future.

Sec. 9.5-434.3. Applicability.

(a) This division shall apply to the installation, construction, or modification of the following Wireless Communications Facilities:

- (1) Existing Towers;
- (2) Proposed Towers;
- ~~(3) City-owned Towers;~~
- ~~(4)(3) Replacement of existing Towers;~~
- ~~(5)(4) Collocation;~~
- ~~(6)(5) Attached Wireless Communications facilities;~~
- ~~(7)(6) Stealth Wireless Communications facilities; and~~
- ~~(8)(7) Satellite Earth Stations;~~

(b) The following items are exempt from the provisions of this Section, notwithstanding the provisions contained in Chapter 6 of the City Code:

- (1) Amateur radio Antennas as provided by federal law; and
- (2) The installation of satellite television or microwave receiving Antennas that do not exceed forty (40) inches in diameter provided that the Antenna is attached to a building used for a residential or commercial use or placed no more than twenty-four (24) inches above finished grade; and

(3) Routine maintenance for any existing Wireless Communications facility; and

(4) The substitution or change of existing Antennas or other equipment on an existing Tower provided the substituted Antennas or equipment does not diminish the structural capacity of the Tower, and provided such change does not increase the overall height of the structure; and

(5) City-owned towers. ~~Upon the declaration of a state of emergency by federal, state, or local government, and a written determination of the public necessity by the City Manager or designee, a City owned Wireless Communications facility may be temporarily permitted as of right where necessary, for the duration of the state of emergency.~~

Sec. 5-434.4. Uses by Land Use District.

The placement of Wireless Communications Facilities shall be in accordance with Table 1 of the is Division.

Sec. 9.5-434.5. Pre-application Conference.

(a) A pre-application conference is required for any proposed Tower, Replacement Tower, Stealth Wireless Communications Facility, or Satellite Earth Station.

(b) At the time a pre-application conference is held, the applicant shall demonstrate that the following notice was mailed (via certified mail) to all interested parties, including other Wireless Communications Service Providers

licensed to provide service within Monroe County as indicated on the list of wireless service providers and interested parties provided by the City of Marathon Planning Department (the "Planning Department"):

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

Sincerely, (pre-application applicant, wireless provider)”; and

(c) Pursuant to City Code Section 9.5-43 all items agreed upon during the Pre-Application Conference, including but not limited to, ~~the exact amount of additional providers to be accommodated on the proposed Wireless Communications Facility,~~ shall be agreed upon during a pre-application conference and recorded in the letter of understanding resulting from the conference.

(d) The City Manager or designee shall determine during the pre-application conference the specific location(s) from which photo-simulated post construction renderings of the proposed Wireless Communications Facility shall

be submitted with the application for a development permit. ~~from the City.~~
~~presented.~~

Section 3. Amendment to the Code. Section 9.5-434.6 of the Code is created to read as follows:

Sec. 9.5-434.6. Development standards.

The following minimum standards shall apply to ~~the following types of~~
Wireless Communications facilities:

(a) Basic submittal requirements for all Wireless Communication Facilities:

(1) A completed application form and any appropriate application fees;

(2) Three (3) sets of signed and sealed site plans indicating all new proposed structures.

(3) A property card for the subject property from the Monroe County Property Appraiser's Office or a Recorded Warranty Deed showing the ownership of the subject parcel.

(4) A signed lease agreement between the property owner and the owner of the Wireless Communication Facility if different than the property owner, and when applicable, a copy of the lease or sublease between the owner of a Wireless Communications Facility and an applicant seeking to collocate additional wireless equipment on the structure. Clauses related to lease term or rent may be deleted or censored.

(5) A stamped or sealed structural analysis of the proposed Wireless Communications Facility prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the facility including a statement by said engineer that the facility is structurally sound and conforms to the applicable codes, including the standards set forth in this Division.

(6) An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:

a. That the radio frequency emissions comply with FCC standards for such emissions.

b. That the construction and placement of the Wireless Communications Facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties.

c. The technical need for the proposed Facility.

d. Proof of an FCC license to transmit and receive radio signals in Monroe County.

(b) The following are additional submittal requirements for all New, Replacement or Stealth Towers and Satellite Earth Station facilities:

(1) One (1) original and two (2) copies of a sealed land survey of the parent parcel(s) showing all existing uses, structures, and improvements.

(2) The required affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer must additionally include:

a. That the height of the proposed Wireless Communications Facility is the minimum necessary.

b. Why an alternate Wireless Communications Facility such as Stealth or Attached, in accordance with the hierarchy established in Section 9.5-434.7 of the Code could not be used.

c. The Geographic Search Area of the proposed Facilities.

d. A technical analysis demonstrating why none of the existing Wireless Communications Facilities located within the applicant's Geographic Search Area can accommodate the applicant's proposed Wireless Communications Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements; antenna height requirements, structural support requirements, ground space requirements for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology.

e. A description of the technological design plan proposed by the applicant demonstrating why design alternatives to the proposed Wireless Communications Facility, such as microcell

design, cannot be utilized to accomplish the provision of the applicant's proposed telecommunications services.

f. Documentation of the efforts made by the applicant to install or to collocate the applicant's proposed Wireless Communications Facility on an existing Tower.

(3) The required three (3) sets of signed and sealed site plans must additionally indicate the:

a. Development Area;

b. Fall Zone;

c. All proposed new development including fencing;

d. Stormwater Management Calculations for all new impervious surfaces, including the dimensions and locations of swales or berms;

e. Landscaping bufferyards and planting lists;

f. Open Space calculations

(4) Photographs of the proposed development site and if applicable, three (3) copies of a vegetation survey or Habitat Evaluation Index (HEI) and Transplantation Plan.

(5) Photo-simulated post construction renderings of the proposed development as determined during the pre-application conference.

(6) A signed statement from the Tower owner, and the property owner if different from the Tower owner, agreeing to allow the Collocation of other wireless equipment on the proposed Tower.

(7) A coordination letter from the United States Fish and Wildlife Service (USFWS) indicating that the proposed Tower and Ancillary Structures will have no significant adverse impact upon wildlife including, but not limited to, migratory birds. Should the USFWS require mitigation, the mitigation strategy agreed upon by the applicant and the USFWS must be submitted to the City prior to issuance of the development permit from the City.

(8) An inventory and map indicating all existing structures within the Geographic Search Area, which can accommodate collocation of the proposed structures or equipment.

(c) Proof of FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace, must be submitted for all New, Replacement or Stealth Tower facilities.

(d) The following approval criteria applies to all Wireless Communications Facilities:

(1) Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions.

(2) Open Space. Pursuant to City Code Section 9.5-262 and 9.5-343 the development proposal shall be required to meet the open space ratio required for the land use district or the habitat where they are

located. For the purposes of this Division the following shall be used to calculate open space.

(i) The area beneath all Equipment Enclosures; plus

(ii) The area of the Wireless Communications Facility foundation at or above grade; plus

(iii) The area beneath Ancillary Structures excluding that which is beneath guy wires (if applicable); plus

(iv) The area inside a lattice type structure framework.

(3) Security. Fencing, in accordance with Section 9.5-309 of the Code, and Anti-climbing Devices shall be required to preserve security on Wireless Communications Facilities.

(4) Signage. The only signage that is permitted upon a Tower, Equipment Enclosures, or fence shall be for security or safety, such as a property management sign which may include the address and telephone numbers; or shall be informational for the purpose of identifying the Tower as well as the party responsible for the operation and maintenance of the facility. Any such sign must comply with the size limitations established in ~~City Code~~ Section 9.5-401 of the Code.

(5) Structural integrity. The entire Wireless Communications Facility and all appurtenances shall be designed pursuant to the most current wind speed design requirements as set forth in the applicable building code. Any Collocation of an ~~on~~ Antennae on an existing Tower

shall not impair the Tower's ability to maintain the most current wind speed design requirements as set forth in the applicable building code.

(6) Landscaping. Landscaping and or screening in the form of at least a Class "D" bufferyard pursuant to Section 9.5-379 of the City Code shall be required around the Development Area for all New Towers and Earth Satellite Stations. Landscaping and or screening in the form of at least a Class "D" bufferyard pursuant to Section 9.5-379 of the City Code shall be installed around the development area to the maximum extent practicable for any Replacement Tower. Landscaping or screening requirements for a Stealth Tower shall be at the discretion of the City Manager or designee for a Stealth Tower.

(e) The following additional approval criteria applies to all New, Replacement or Stealth Towers and Satellite Earth Stations:

(1) Structural integrity. The new-Tower shall be designed to ensure that in the event of a structural failure or natural disaster, the Tower shall collapse in a limited, defined fall zone.

(2) Structural Capacity. The new-Tower shall be designed to accommodate the maximum number of Providers whose Antenna(e) can be collocated on the Tower and whose Equipment Enclosures can be accommodated in the subject parcel.

(3) Lighting. Except at the discretion of the City Manager or designee, any new-Tower shall not have lighting higher than 20 feet above the ground unless required by the FAA or the FCC. Any such lighting

placed on a Tower shall comply with the provisions of Section 9.5-394 and Section 13-63 of the City Code.

(4) Aesthetics. A New or Replacement Tower which is not regulated in appearance by the FAA shall maintain a galvanized gray finish or other accepted contextual or compatible color approved by the City Manager or designee. No stealth facility, whether fully enclosed within a building or otherwise, shall have Antennas, Antenna Arrays, transmission lines, Equipment Enclosures or other ancillary equipment which is readily identifiable from the public right of way as wireless communications equipment. Satellite Earth Stations shall maintain contextual or compatible color(s) as determined by the City Manager or designee so as to maintain compatibility with surrounding land uses.

(5) Compatibility with community character. The Communications Facility shall be compatible ~~consistent~~ with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties. Where a Wireless Communications Facility is allowed as of right, compatibility shall be presumed unless the City can demonstrate otherwise. The following attributes shall be considered from vantage points within one (1) mile of the base of the proposed of Tower and from three hundred (300) feet from the base of an Satellite Earth Station:

- (i) Height;
- (ii) Mass and scale;

(iii) Materials and color; and

(iv) Illumination.

(f) An attached Wireless Communications Facility shall only be attached to a commercial retail or office, industrial, hotel, multifamily, institutional, or public building of at least thirty-five (35) feet in height.

(g) The following height criteria applies to Wireless Communications Facilities:

(1) A New, Replacement or Stealth Tower shall not exceed 250 feet in height. In addition to the provisions of Section 9.5-252 of the Code, the overall height of a Tower located in the vicinity of a public or private airport shall be limited by the following:

a. A 35:1 Glide Path ratio in the Horizontal Zone limiting the height of a Tower to one hundred fifty (150) feet within one (1) statutory mile (5,280 feet) from the edge of the private airport Primary Surface.

b. A 12:1 Glide Path ratio in the Conical Zone limiting the height of a Tower to six hundred (600) feet within one (1) statutory mile (5,280 feet) from the edge of the Horizontal Zone.

(2) Any Collocation of an antenna on an existing Tower shall not increase the overall height of the Tower.

(3) For Attached Facilities, any Antenna, Antenna Array, attachment device, Aancillary Structure ~~equipment~~—or Equipment

Eenclosure shall not exceed the highest point of the building by more than twenty (20) feet.

(4) The maximum height for any portion of a Satellite Earth Station is thirty-five (35) feet. If any portion projects over thirty-five (35) feet as measured from the existing grade, the Wwireless Communications fFacility shall be reviewed under all provisions of the Code applicable to a New Tower Facility.

(h) The following setback criteria applies to Wireless Communications Facilities:

(1) All new Towers, Stealth Towers and Satellite Earth Stations and their Equipment Enclosures and associated Ancillary Structures shall meet the minimum setback requirements for the land use district where they are located pursuant to Section 9.5-281 of the City Code or meet the environment setback criteria established for shorelines, wetlands or Marine Turtle nesting habitat where applicable. Notwithstanding these setback requirements, the Tower or Dish-Satellite Earth Station structure shall be located so that the Fall Zone is located entirely within the boundaries of the subject parcel.

(2) All Replacement Towers and their Equipment Enclosures and associated Ancillary Structures and those for Collocation antennas shall meet the minimum setback requirements listed above to the maximum extent practicable. Replacement Tower foundations shall not be any closer to the property lines than the foundation of the original Tower being replaced.

(3) All Attached Antenna or Antenna Arrays, Equipment Enclosures and ancillary equipment placed on the roof of a building shall be as close to the center of the roof as is feasible in light of any engineering limitations of the building, unless the Attached Wireless Communications Facility is camouflaged, screened, or painted so as to blend in with the building where it is located.

~~(a) New Towers.~~

~~(1) Approval criteria:~~

~~a. Setbacks.~~

~~1. New Towers, Equipment Enclosures, and the associated Ancillary Structures must meet the environmental design criteria related to wetland setbacks pursuant to Section 9.5 345 of the Code;~~

~~2. Any new Towers, Equipment Enclosures and Ancillary Structures shall meet the minimum setback requirements for the land use district where they are located pursuant to Section 9.5 281 of the Code;~~

~~3. New Towers shall be set back from the edge of the parent parcel of the Development Area a minimum distance of 25% of the height of the structure.~~

~~b. Structural integrity and capacity.~~

~~1. The entire Tower and all appurtenances shall be designed pursuant to the most current wind speed design~~

~~requirements as set forth in the applicable building code;~~

and

~~2. The new Tower shall be designed to ensure that in the event of a structural failure or natural disaster, the Tower shall collapse in a fall zone that is located entirely within the Development Area. If a Tower cannot be designed to meet the fall zone, notwithstanding the setback requirements, the Tower shall be set back in the Development Area a minimum distance equal to the height of the Tower.~~

~~3. The new Tower shall be designed to accommodate the maximum number of Providers whose Antenna(e) can be accommodated on the Towers and whose Equipment Enclosures can be accommodated in the Development Area.~~

~~e. Lighting.~~

~~1. Any new Tower shall not have lighting higher than 20 feet above the ground unless lighting is required by the FAA or the FCC.~~

~~2. Any lighting placed on a Tower shall be completed in accordance with the provisions of Section 9.5-394 of the Land Development Regulations and Section 13-63 of the City Code.~~

~~d. — Aesthetics. A new Tower which is not regulated in appearance by the FAA shall maintain a galvanized gray finish or other accepted contextual or compatible color approved by the City Manager or designee.~~

~~e. — Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions.~~

~~f. — Development Area. The following shall be considered as Development Area and except for the fall zone shall be required to meet the setbacks and open space ratio requirements for the land use district and habitat where they are located:~~

~~(i) — The area beneath all Equipment Enclosures;~~

~~plus~~

~~(ii) — The area of the Tower foundation at or above grade; plus~~

~~(iii) — The area beneath Ancillary Structures excluding that which is beneath guy wires (if applicable); plus~~

~~(iv) — (iv) The area inside the Tower framework; plus;~~

~~(v) — theThe fall zone.~~

~~g. — Security. Fencing, in accordance with Section 9.5-309 of the Code, and Anti-climbing Devices shall be required to preserve security on wireless communication facilities.~~

~~h. — Landscaping. Landscaping and or screening in the form of at least a Class D buffer as drawn in the Class D Bufferyard Figure in Section 9.5 379 of the Code shall be required around the Development Area.~~

~~i. — Signage. The only signage that is permitted upon a Tower, Equipment Enclosures, or fence (if applicable) shall be informational, and for the purpose of identifying the Tower, as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).~~

~~j. — Height and Aircraft obstruction. A new Tower shall not exceed 250 feet in height. In addition to the provisions of Section 9.5 252 of the Code, the overall height of a new Tower located in the vicinity of a public or private airport shall be limited by the following:~~

~~(i) — A 35:1 Glide Path ratio in the Horizontal Zone limiting the heights of Satellite Earth Stations to one hundred fifty (150) feet within one (1) statutory mile (5,280 feet) from the edge of the private airport Primary Surface; and~~

~~(ii) — A 12:1 Glide Path ratio in the Conical Zone limiting the heights of Satellite Earth Stations to six~~

~~hundred (600) feet within one (1) statutory mile (5,280 feet) from the edge of the Horizontal Zone.~~

~~k. Compatibility with community character. The Tower shall be consistent with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties pursuant to Subsections 9.5-65 (b) and (c) of the Code. The following attributes shall be considered from vantage points within one (1) mile of the base of the proposed of Tower:~~

- ~~(i) Height;~~
- ~~(ii) Mass and scale;~~
- ~~(iii) Materials and color; and~~
- ~~(iv) Illumination.~~

~~(2) Submittal requirements:~~

~~a.(f) A completed application form and any appropriate application fees;~~

~~b.(g) Three (3) sets of signed and sealed site plans;~~

~~c.(h) A property card for the subject property from the Monroe County Property Appraiser's Office or a tax bill showing the ownership of the subject parcel;~~

~~d.(i) A form indicating that a property and Tower owner's agent has authorization to act upon their behalf (if applicable);~~

~~e.(j) An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:~~

~~1.e. That the radio frequency emissions comply with FCC standards for such emissions;~~

~~2.f. That the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties;~~

~~3.g. That the height of the Tower is the minimum necessary;~~

~~4.h. Why a Stealth or Attached Wireless Communication Facility could not be used;~~

~~5.i. The Geographic Search Area of the proposed Facilities;~~

~~6.j. The technical need for the proposed Facilities;~~

~~7.k. An inventory list of all existing Wireless Communications Facilities located within the Geographic Search Area;~~

~~8.l. A technical analysis demonstrating why none of the existing Wireless Communications Facilities listed in Subsection 7 above located within the applicant's~~

~~Geographic Search Area can accommodate the applicant's proposed Wireless Communication Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements; antenna height requirements; structural support requirements; ground space requirements for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology;~~

~~9.m. A description of the technological design plan proposed by the applicant demonstrating why design alternatives to a Tower, such as microcell design, cannot be utilized to accomplish the provision of applicant's proposed telecommunications services;~~

~~10.n. The efforts made by the applicant to install or to collocate the applicant's Tower or Antenna(e) on an existing Tower; and~~

~~11.o. Proof of an FCC license to transmit and receive radio signals in Monroe County.~~

~~f.(k) A stamped or sealed structural analysis of the proposed Tower prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the Tower and a statement by said engineer that the Tower is structurally sound and conforms to the applicable codes, including the standards set forth in this Division.~~

~~g.(1) One (1) original and two (2) copies of a survey of the parent parcel(s), including the Development Area, completed by an engineer licensed by the State of Florida which shows all existing uses, structures, and improvements;~~

~~h.(m) Three (3) copies of a vegetation survey or Habitat Evaluation Index (HEI); and~~

~~i.(n) Photo simulated post construction renderings of the proposed Tower, Equipment Enclosures, and Ancillary Structures as they would look, after construction, from adjacent roadways and any other locations the City Manager or designee determines during the pre application conference.~~

~~j.(o) Proof of FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace;~~

~~k.(p) A signed statement from the Tower owner agreeing to allow the Collocation of other wireless equipment on the proposed Tower;~~

~~l.(q) If required by the United States Fish and Wildlife Service, a letter indicating that the proposed Tower and Ancillary Structures will have no effect upon wildlife including, but not limited to, migratory birds or that any effect which is created will be mitigated to the extent possible.~~

~~m.(r) A survey, indicating on a map all existing structures within the Geographic Search Area, City or a three (3) mile radius of the City which structures can accommodate collocation of the proposed structures or equipment.~~

~~(b) Replacement of an existing Tower.~~

~~(1) Approval criteria for Replacement Towers:~~

~~a. Setbacks.~~

~~1. Any new Equipment Enclosures shall meet the minimum setback requirements for the land use district where they are located pursuant to Section 9.5-281 of the Code; and~~

~~2. Replacement Tower foundations (excluding guy wire anchors) constructed on a property or properties which is/are contiguous to the IS, SS, SR, UR or URM zones shall not be any closer to these zones than the foundation of the original Tower being replaced; and~~

~~3. Replacement Towers and the associated Ancillary Structures shall meet the environmental design criteria related to wetland setbacks pursuant to Section 9.5-345 of the Code to the maximum extent practicable.~~

~~b. Structural integrity and capacity.~~

~~1. The entire Replacement Tower and all appurtenances shall be designed pursuant to the most current wind speed design requirements as set forth in the applicable code; and~~

~~2. The Replacement Tower shall be designed to accommodate the Wireless Communications equipment of other wireless communication service providers. The exact amount of additional equipment to be accommodated shall be agreed upon during a pre-~~

~~application conference and recorded in the letter of understanding resulting from the conference.~~

~~e. — Lighting.~~

~~1. — At the discretion of the City Manager or designee, any Replacement Tower shall not have lighting higher than 20 feet above the ground unless it is required by the FAA to provide aircraft obstruction lighting, shall provide the following:~~

~~2. — Any lighting placed on a Replacement Tower shall be completed in accordance with the provisions of Section 9.5-394 of the Land Development Regulations and Section 13-63 of the Code.~~

~~d. — Aesthetics. Replacement Towers which are not regulated in appearance by the FAA shall maintain a galvanized gray finish or other accepted contextual or compatible color at the discretion of the City Manager or designee.~~

~~e. — Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions.~~

~~f. — Development Area. The following shall be considered as Development Area, except for the fall zone, and shall be required to meet the setbacks and open space ratio requirements for the land use district and habitat where they are located:~~

~~(i) The area beneath all Equipment Enclosures;~~

~~plus~~

~~(ii) The area of the Replacement Tower foundation at or above grade; plus~~

~~(iii) The area beneath Ancillary Structures excluding that which is beneath guy wires (if applicable);~~

~~plus~~

~~(iv) The area inside the Replacement Tower framework; plus~~

~~(v) The fall zone.~~

~~g. Security. Fencing, in accordance with Section 9.5-309 of the Code, and Anti-climbing Devices shall be required to preserve security on wireless communication facilities.~~

~~h. Landscaping. Landscaping and or screening in the form of at least a Class D buffer as drawn in the Class D Bufferyard Figure in Section 9.5-379 of the Code shall be required around the Development Area to the maximum extent practicable.~~

~~i. Signage. The only signage that is permitted upon a Tower, Equipment Enclosures, or fence (if applicable) shall be informational, and for the purpose of identifying the Tower, as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).~~

~~j. Height. A Replacement Tower may not have a greater overall height above ground level than the structure it is replacing unless the height is increased, to a maximum of 250 feet, to provide for additional Collocation capacity.~~

~~(2) Submittal requirements:~~

~~a. A completed application form and any appropriate application fees;~~

~~b. Three (3) sets of signed and sealed site plans;~~

~~c. A property card for the subject property from the Monroe County Property Appraiser's Office or a tax bill showing the ownership of the subject parcel;~~

~~d. A form indicating that a property and Replacement Tower owner's agent has authorization to act upon their behalf (if applicable);~~

~~e. An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:~~

~~1. That the radio frequency emissions comply with FCC standards for such emissions;~~

~~2. That the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties;~~

~~3. That the height of the Tower is the minimum necessary;~~

~~4. Why a Stealth or Attached Wireless Communication Facility could not be used;~~

~~5. The Geographic Search Area of the proposed Facilities;~~

~~6. The technical need for the proposed Facilities;~~

~~7. An inventory list of all existing Wireless Communications Facilities located within the Geographic Search Area;~~

~~8. A technical analysis demonstrating why none of the existing Wireless Communications Facilities listed in Subsection 7 above located within the applicant's Geographic Search Area can accommodate the applicant's proposed Wireless Communication Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements; antenna height requirements; structural support requirements; ground space requirements for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology;~~

~~9. — A description of the technological design plan proposed by the applicant demonstrating why design alternatives to a Tower, such as microcell design, cannot be utilized to accomplish the provision of applicant's proposed telecommunications services;~~

~~10. — The efforts made by the applicant to install or to collocate the applicant's Tower or Antenna(e) on an existing Tower; and~~

~~11. — Proof of an FCC license to transmit and receive radio signals in Monroe County.~~

~~f. — A stamped or sealed structural analysis of the proposed Replacement Tower prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the Replacement Tower;~~

~~g. — One (1) original and two (2) copies of a survey of the parent parcel(s), including the Development Area, completed by an engineer licensed by the State of Florida which shows all existing uses, structures, and improvements;~~

~~h. — Three (3) copies of a vegetation survey or Habitat Evaluation Index (HEI);~~

~~i. — Photo simulated post construction renderings of the proposed Tower, Equipment Enclosures, and Ancillary Structures as they would look after construction from adjacent roadways and~~

~~any other locations the City Manger or designee determines during the pre-application conference;~~

~~j. — Proof of FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace;~~

~~k. — A signed statement from the Replacement Tower owner agreeing to allow the Collocation of other wireless equipment on the proposed Replacement Tower;~~

~~l. — A signed statement from the Replacement Tower owner agreeing to allow the Collocation of other wireless equipment on the proposed Replacement Tower; and~~

~~m. — If required by the United States Fish and Wildlife Service, a letter indicating that the proposed Replacement Tower and Ancillary Structures will have no effect upon wildlife including, but not limited to, migratory birds or that any effect which is created will be mitigated to the extent possible.~~

~~(e) — Collocations on an existing Tower.~~

~~(1) — Approval criteria:~~

~~a. — Setbacks:~~

~~1. — Any new Equipment Enclosures and Ancillary Structures shall meet the minimum setback requirements for the land use district where they are located pursuant to Section 9.5-281 of the Code;~~

~~2. New Equipment Enclosures placed in the Development Area at an existing legally non conforming Wireless Communications Facility (with respect to wetland setbacks) shall be required to meet the environmental design criteria of Section 9.5 345 of the Code;~~

~~b. Structural Integrity. Any Collocation of Antennae on an existing Tower shall not impair the Tower's ability to maintain the most current wind speed design requirements as set forth in the applicable building code;~~

~~e. Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions;~~

~~d. Development Area. The following shall be considered as Development Area and shall be required to meet the setbacks and open space ratio requirements for the land use district and habitat where they are located:~~

~~(i) The area beneath all new Equipment Enclosures; plus~~

~~(ii) The area of the Tower foundation at or above grade; plus~~

~~(iii) The area beneath new Ancillary Structures excluding that which is beneath guy wires (if applicable); plus~~

~~(iv) The area inside the Tower framework;~~

~~e. Security. Fencing, in accordance with Section 9.5-309 of the Code, and Anti-climbing Devices shall be required to preserve security on wireless communication facilities;~~

~~f. Landscaping. Landscaping and or screening in the form of at least a Class D buffer as drawn in the Class D Bufferyard Figure in Section 9.5-379 of the Code shall be required around the Development Area;~~

~~g. Signage. The only signage that is permitted upon an Tower, Equipment Enclosures, or fence (if applicable) shall be informational, and for the purpose of identifying the Tower, as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable); and~~

~~h. Height. Collocation on an existing Tower shall not increase the overall height of the Tower.~~

~~(2) Submittal requirements:~~

~~a. Completed application form and any appropriate application fees;~~

~~b. Three (3) sets of signed and sealed site plans;~~

~~c. A property card for the subject property from the City of Marathon Property Appraiser's Office or a tax bill showing the ownership of the subject parcel;~~

~~d. — A form indicating that a property, Tower, and Antenna owner's agent has authorization to act upon their behalf (if applicable);~~

~~e. — An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:~~

~~1. — That the radio frequency emissions comply with FCC standards for such emissions;~~

~~2. — That the construction and placement of the Collocation will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties;~~

~~3. — Proof of an FCC license to transmit and receive radio signals in Monroe County.~~

~~f. — A stamped or sealed structural analysis of the existing Tower prepared by an engineer licensed by the State of Florida indicating that the existing Tower as well as all existing and proposed appurtenances can withstand a peak wind speed gust equivalent to the original current design criteria for the Tower; and~~

~~g. — One (1) original and two (2) copies of a survey of the parent parcel(s), including the Development Area, completed~~

by an engineer licensed by the State of Florida which shows all existing uses, structures, and improvements; and

h. — A copy of the lease or sublease between the owner of the Tower and the applicant seeking to place additional wireless equipment on the structure. — Clauses related to lease term or rent may be deleted or censored.

(d) — Attached Wireless Communications facilities.

(1) — Approval criteria:

a. — Setbacks. All Attached Antenna or Antenna Arrays, Equipment Enclosures and ancillary equipment placed on the roof of a building shall be as close to the center of the roof as is feasible in light of any engineering limitations of the building, unless the Attached Wireless Communications Facility is camouflaged, screened, or painted so as to blend in with the building where it is located;

b. — Structural Integrity. Attached Antenna Wireless Communication Facilities shall comply with the most current wind speed design requirements as set forth in the applicable building code;

b.c. — Aesthetics. All proposed Attached Wireless Communications Facilities, Antennas or Antenna Arrays, Equipment Enclosures and ancillary equipment shall be placed inside the building where they are located or set back;

~~camouflaged, screened, or painted so as to blend in with the building where they are located;~~

~~e.d. Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions;~~

~~d.e. Development Area. The following shall be considered as Development Area and shall be required to meet the setbacks and open space ratio requirements for the land use district and habitat where they are located:~~

~~(i) The area beneath all Equipment Enclosures;
plus~~

~~(ii) The area of the Attached Wireless Communications Facility foundation at or above grade;
plus; plus~~

~~(iii) The area beneath Ancillary Structures excluding that which is beneath guy ~~guy~~ wires (if applicable); plus~~

~~(iv) The area inside the Attached Wireless Communications Facility framework.~~

~~e.f. Signage. The only signage that is permitted upon an Tower, Equipment Enclosures, or fence (if applicable) shall be informational, and for the purpose of identifying the Tower, as well as the party responsible for the operation and maintenance of~~

~~the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable);~~

~~f.g. Height.~~

~~1. An Attached Wireless Communications facility shall only be attached to a commercial retail, industrial, hotel, multifamily, institutional, or public building of at least three (3) stories or at least thirty five (35) feet in height;~~

~~2. The Antenna, Antenna Array, attachment device, Equipment Enclosure and any ancillary equipment shall not extend above the highest point of the building by more than twenty (20) feet; and~~

~~3. Existing or proposed Attached Wireless Communications Facilities utilizing a truss assembly Tower similar to a Guyed or Self Supporting tower which projects more than twenty (20) feet above the highest point of the building upon which it is mounted shall be considered a Tower and subject to the provisions for these types of uses pursuant to Section 9.5-434.4(a) of the Code.~~

~~(2) Submittal requirements:~~

~~a. Completed application form and any appropriate application fees;~~

~~b. Three (3) sets of signed and sealed site plans;~~

~~c. — A property card for the subject property from the Monroe County Property Appraiser's Office or a tax bill showing the ownership of the subject parcel;~~

~~d. — A form indicating that the property, Tower, and Antenna owner's agent has authorization to act upon their behalf (if applicable);~~

~~e. — An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:~~

~~1. — That the radio frequency emissions comply with FCC standards for such emissions;~~

~~2. — That the construction and placement of the Attached Wireless Communication Facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties;~~

~~3. — Proof of an FCC license to transmit and receive radio signals in Monroe County.~~

~~f. — A stamped or sealed structural analysis of the proposed Tower prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the Tower; and~~

~~g. One (1) original and two (2) copies of a survey of the parent parcel(s), including the Development Area, completed by an engineer licensed by the State of Florida which shows all existing uses, structures, and improvements.~~

~~(e) Stealth Wireless Communications facilities:~~

~~(1) Approval criteria:~~

~~a. Setbacks:~~

~~1. Stealth facilities shall meet the environmental design criteria related to wetland setbacks pursuant to Section 9.5-345 of the Code;~~

~~2. Stealth facilities shall meet the minimum setback requirements for the land use district where they are located pursuant to Section 9.5-281 of the Code;~~

~~b. Structural integrity. The stealth facility shall be designed pursuant to the most current wind speed design requirements as set forth in the current building code;~~

~~c. Aesthetics. No stealth facility, whether fully enclosed within a building or otherwise, shall have Antennas, Antenna Arrays, transmission lines, Equipment Enclosures or other ancillary equipment which is readily identifiable from the public right of way as wireless communications equipment.~~

~~d. Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions;~~

~~e. Development Area. The following shall be considered as Development Area and, except for the fall zone, shall be required to meet the setbacks and open space ratio requirements for the land use district and habitat where they are located:~~

~~(i) The area beneath all Equipment Enclosures;~~

~~plus~~

~~(ii) The area of the Stealth Wireless Communications Facility foundation at or above grade;~~

~~plus~~

~~(iii) The area beneath Ancillary Structures excluding that which is beneath guy wires (if applicable);~~

~~plus~~

~~(iv) (iv) The area inside the Stealth Wireless Communications Facility framework; plus~~

~~(v) The fall zone, if applicable.~~

~~f. Compatibility with Community Character. Stealth Wireless Communications Facilities shall be consistent with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties pursuant to Subsections 9.5.65 (b) and (c) of the Code. The following attributes shall be considered from vantage points within one (1) mile of the base of the proposed of Tower: and~~

- ~~(i) Height;~~
- ~~(ii) Mass and scale;~~
- ~~(iii) Materials and color; and~~
- ~~(iv) Illumination.~~

~~g. Accessory use. A stealth facility shall be an accessory use as defined by Section 9.5.4 in the Land Development Regulations;~~

~~(2) Submittal requirements:~~

~~a. A completed application form and any appropriate application fees;~~

~~b. Three (3) sets of signed and sealed site plans;~~

~~c. A property card for the subject property from the Monroe County Property Appraiser's Office or a tax bill showing the ownership of the subject parcel;~~

~~d. A form indicating that a property and Stealth Wireless Communications Facility owner's agent has authorization to act upon their behalf (if applicable);~~

~~e. An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:~~

~~1. That the radio frequency emissions comply with FCC standards for such emissions;~~

~~2. That the construction and placement of the Stealth Wireless Communications Facility will not interfere~~

~~with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties;~~

~~3. That the height of the Stealth Wireless Communications Facility is the minimum necessary;~~

~~4. Why Collocation or an Attached Wireless Communication Facility could not be used;~~

~~5. The Geographic Search Area of the proposed Facilities;~~

~~6. The technical need for the proposed Facilities;~~

~~7. An inventory list of all existing Wireless Communications Facilities located within the Geographic Search Area;~~

~~8. A technical analysis demonstrating why none of the existing Wireless Communications Facilities listed in Subsection 7 above located within the applicant's Geographic Search Area can accommodate the applicant's proposed Wireless Communication Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements, antenna height requirements, structural support requirements, ground space requirements~~

~~for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology;~~

~~9. A description of the technological design plan proposed by the applicant demonstrating why design alternatives to a Stealth Wireless Communications Facility, such as microcell design, cannot be utilized to accomplish the provision of applicant's proposed telecommunications services;~~

~~10. The efforts made by the applicant to install or to collocate the applicant's Stealth Wireless Communications Facility or Antenna(e) on an existing Tower; and~~

~~11. Proof of an FCC license to transmit and receive radio signals in Monroe County.~~

~~f. A stamped or sealed structural analysis of the proposed Stealth Wireless Communications Facility prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the Tower;~~

~~g. One (1) original and two (2) copies of a survey of the parent parcel(s), including the Development Area, completed by an engineer licensed by the State of Florida, which shows all existing uses, structures, and improvements;~~

~~h. — Three (3) copies of a vegetation survey of Habitat Evaluation Index (HEI);~~

~~i. — Photo simulated post construction renderings of the proposed Stealth Wireless Communications Facility, Equipment Enclosures, and Ancillary Structures as they would look after construction from adjacent roadways and any other locations the City Manager or designee determines;~~

~~j. — If applicable, proof of FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace;~~

~~k. — If applicable, a signed statement from the Stealth Wireless Communications Facility's owner agreeing to allow the Collocation of other wireless equipment on the proposed Stealth Wireless Communications Facility; and~~

~~l. — If applicable, and if required by the United States Fish and Wildlife Service, a letter indicating that the proposed Stealth Wireless Communications Facility and Ancillary Structures will have no effect upon wildlife including, but not limited to, migratory birds or that any effect which is created will be mitigated to the extent possible.~~

~~(f) — Satellite Earth Stations:~~

~~(1) — Approval criteria:~~

~~a. — Setbacks:~~

~~1. Satellite Earth Stations and the associated Ancillary Structures must meet the environmental design criteria related to wetland setbacks pursuant to Section 9.5-345 of the Code;~~

~~2. Any Satellite Earth Stations, Equipment Enclosures and Ancillary Structures shall meet the minimum setback requirements for the land use district where they are located pursuant to Section 9.5-281 of the Code; and shall be set back from the edge of the property a distance equal to or greater than 25% of the height of the structure;~~

~~b. Structural Integrity. Any Satellite Earth Station shall comply with the most current wind speed design requirements as set forth in the applicable building code;~~

~~b.c. Aesthetics. Satellite Earth Stations shall maintain contextual or compatible color(s) as determined by the City Manager or designee so as to maintain compatibility with surrounding land uses;~~

~~e.d. Radio Frequency Emissions. The Radio Frequency Emissions shall comply with FCC standards for such emissions;~~

~~d.e. Development Area. The following shall be considered as Development Area and, except for the fall zone, shall be required to meet the setbacks and open space ratio~~

requirements for the land use district and habitat where they are located:

~~(i) The area beneath all Equipment Enclosures;~~

plus

~~(ii) The area of the Satellite Earth Station's structure foundation at or above grade; plus~~

~~(iii) The area beneath Ancillary Structures excluding that which is beneath guy wires (if applicable);~~

plus

~~(iv) The area inside the Satellite Earth Station framework; plus~~

~~(v) The fall zone, if applicable.~~

~~e.f. Security. Fencing, in accordance with Section 9.5-309 of the Code, and Anti-climbing Devices shall be required to preserve security on Wireless Communication Facilities;~~

~~f.g. Landscaping. Landscaping and or screening in the form of at least a Class D buffer as drawn in the Class D Bufferyard Figure in Section 9.5-379 of the Code shall be required around the Development Area;~~

~~g.h. Signage. The only signage that is permitted upon a Satellite Earth Station, Equipment Enclosures, or fence (if applicable) shall be informational, and for the purpose of identifying the Satellite Earth Station, as well as the party~~

~~responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable); and~~

~~h.i. Height. The maximum height for any portion of a Satellite Earth Station is thirty five (35) feet. If any portion of a Satellite Earth Station projects over thirty five (35) feet as measured from the ground elevation, then the facility is to be reviewed under the provisions of Section 9.5 434.4 (a) of the Code;~~

~~i.j. Compatibility with community character. Satellite Earth Stations shall be consistent with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties pursuant to Subsections 9.5 65 (b) and (c) of the Code. The following attributes shall be considered from vantage points within three (3) miles of the base of the proposed of Tower:~~

- ~~(i) Height;~~
- ~~(ii) Mass and scale;~~
- ~~(iii) Materials and color; and~~
- ~~(iv) Illumination.~~

~~(2) Submittal requirements:~~

~~a. — A completed application form and any appropriate fees;~~

~~b. — Three (3) sets of signed and sealed site plans;~~

~~c. — A property card for the subject property from the Monroe County Property Appraiser's Office or a tax bill showing the ownership of the subject parcel;~~

~~d. — A form indicating that a property and Satellite Earth Station owner's agent has authorization to act upon their behalf (if applicable);~~

~~e. — An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:~~

~~1. — That the radio frequency emissions comply with FCC standards for such emissions;~~

~~2. — That the construction and placement of the Satellite Earth Station will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties;~~

~~3. — That the height of the Satellite Earth Station is the minimum necessary;~~

~~4. — Why a Stealth or Attached Wireless Communication Facility could not be used;~~

~~5. The Geographic Search Area of the proposed Facilities;~~

~~6. The technical need for the proposed Facilities;~~

~~7. An inventory list of all existing Wireless Communications Facilities located within the Geographic Search Area;~~

~~8. A technical analysis demonstrating why none of the existing Wireless Communications Facilities listed in Subsection 7 above located within the applicant's Geographic Search Area can accommodate the applicant's proposed Wireless Communication Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements; antenna height requirements, structural support requirements, ground space requirements for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology;~~

~~9. A description of the technological design plan proposed by the applicant demonstrating why design alternatives to a Satellite Earth Station, such as microcell design, cannot be utilized to accomplish the provision of applicant's proposed telecommunications services;~~

~~10. — The efforts made by the applicant to install or to collocate the applicant's Satellite Earth Station on an existing Tower; and~~

~~11. — Proof of an FCC license to transmit and receive radio signals in Monroe County.~~

~~f. — A stamped or sealed structural analysis of the proposed Satellite Earth Station prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the Satellite Earth Station;~~

~~g. — One (1) original and two (2) copies of a survey of the parent parcel(s), including the Development Area, completed by an engineer licensed by the State of Florida which shows all existing uses, structures, and improvements;~~

~~h. — Three (3) copies of a vegetation survey or Habitat Evaluation Index (HEI);~~

~~i. — Photo simulated post construction renderings of the proposed Satellite Earth Station, Equipment Enclosures, and Ancillary Structures as they would look after construction from the adjacent roadways and any other locations the City Manager or designee determines;~~

~~j. — If required by the United States Fish and Wildlife Service, a letter indicating that the proposed Satellite Earth Station and Ancillary Structures will have no effect upon wildlife~~

~~including, but not limited to, migratory birds or that any effect which is created will be mitigated to the extent possible.~~

Section 4. Amendment to the Code. Section 9.5-434.7 of the Code is hereby created to read as follows:

Sec. 9.5-434.7. Hierarchy. In addition to all other development requirements, a hierarchy shall be utilized to determine the approval or denial of an application for a particular development permit under this Division. Any application under this Division may be denied if a feasible alternative that is higher on the hierarchy is available. The hierarchy shall be in descending order as follows:

- (a) Collocation;
- (b) Attached Wireless Communications Facility;
- (c) Replacement Tower;
- (d) Stealth Wireless Communications Facility; and
- (e) New Tower or Satellite Earth Station.

Section 5. Amendment to the Code. Sections 9.5-434.8 of the Code is hereby created to read as follows:

Sec. 9.5-434.8. Abandoned Wireless Communications Facilities.

(a) If the use of a Wireless Communications Facility is discontinued, the property owner or Provider shall provide written notice to the City of its intent to discontinue the use and the effective date of same.

(b) In the event the use of a Wireless Communications Facility has been discontinued for a period of one hundred eighty (180) days whether

voluntarily, involuntarily, or upon revocation of the development permit or the biennial report required in Section 9.5-434.9 of the Code if not filed, the Facility shall be deemed to be abandoned. Upon receipt of a notice of discontinuation specified in Subsection (a) or upon an abandonment under Subsection (b), the City Manager or designee shall provide the property owner with written notice of an abandonment determination by certified mail.

(c) The property owner shall have 120 days from receipt of the notice to: (i) reactivate the use of the Wireless Communications Facility, (ii) transfer the Wireless Communications Facility to another owner who makes actual use of the facility within the 120 day period, or (iii) dismantle and remove the Wireless Communications Facility.

Section 6. Amendment to the Code. Section 9.5-434.9 of the Code is created to read as follows:

Sec. 9.5-434.9 Inspections.

(a) The City Manager or designee shall require ~~annual~~ inspections of Wireless Communications Facilities every two years to ensure structural and electrical integrity and compliance with the applicable City Codes. Based upon the results of the inspection, the City may ~~make~~ impose additional requirements such as, but not limited to, require additional landscaping, stormwater retention, repair or removal of structures or the Wireless Communications Facility.

(b) The owner(s) of Wireless Communications Facilities shall submit a report to the City performed by an engineer licensed by the State of Florida certifying structural and electrical integrity every two (2) years. The report shall

be accompanied by a non-refundable fee of two hundred dollars (\$200.00) to reimburse the City for the cost of review.

Section 7. Amendment to the Code. Section 9.5-434.10 of the Code is created to read as follows:

Sec. 9.5-434.10. Temporary Towers.

(a) The City Manager may authorize the issuance of a permit for a temporary Wireless Communications Facility in order for a Provider to provide services when an existing Facility has been damaged in a declared emergency or when a development permit has been issued under this Division during the construction of the Facility.

(b) The location of the temporary Wireless Communications Facility and the duration of the permit shall be determined by the City Manager; however, no permit shall extend beyond ninety (90) days.

(c) The City Manager shall determine minimum insurance and bonding requirements for temporary facilities as a condition of issuance of the permit.

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

Section 8. Amendment to the Code. Section 9.5-434.11 of the Code is created to read as follows:

Sec. 9.5-434.11. Expert Review.

(a) The City Manager or designee may require a technical review of the application by applicable independent experts, which may include an engineer, a Radio Frequency Engineer, and a planner.

(b) The technical review shall address the following:

(1) The accuracy and completeness of the required submissions;

(2) The applicability of analysis, techniques and methodologies;

(3) The validity of the analysis submitted by the Applicant's Radio Frequency Engineer as to the technical needs of the Provider to locate the Facilities in the particular Geographic Search Area and the inability to locate on existing Facilities;

(4) Whether the proposed Wireless Communications Facility complies with the applicable approval criteria set forth in this Division; and

(5) Other matters deemed by the City Manager or designee to be relevant to determining whether a proposed Wireless Communications Facility complies with the provisions of this Division.

(c) Based on the results of the technical review, the City Manager or designee may require changes to the applicant's application or additional submittals.

(d) The cost to the City for the expert's technical review shall be paid by the applicant. At the applicant's option, the applicant may request an expedited review. Any additional costs associated with the expedited review shall also be paid by the applicant. The applicant shall reimburse the City within five (5) working days of the date of receipt of an invoice for expenses associated with the expert's review of the application. Failure by the applicant to make reimbursement pursuant to this Section shall abate further review of the application until the reimbursement is paid in full to the City.

Section 9. Amendment to the Code. Section 9.5-434.12 of the Code is created to read as follows:

Sec. 9.5-434.12. Equipment Enclosures. Equipment Enclosures shall comply with the minimum bulk and height requirements of the applicable zoning district where such buildings are situated.

(a) An Equipment Enclosure shall be considered a permanent structure, shall be unmanned, and shall not exceed 500 square feet in size. Multiple Equipment Enclosures may be permitted on a Development Area; provided, however, that the total aggregate square footage of such Equipment Enclosures shall not exceed 1,000 square feet unless a Radio Frequency Engineer determines by technical review under Section 9.5-434.11 of the Code that additional square footage is required.

(b) Mobile or immobile equipment, construction materials or vehicles not used in direct support of a Wireless Communications Facility shall not be

stored or parked on the site, unless repairs to the Wireless Communications Facility are being made.

Section 10. Amendment to the Code. Section 9.5-434.13 of the Code is created to read as follows:

Sec. 9.5-434.13. Variances for Wireless Communications Facilities.

(a) A variance to this Division shall be submitted to the City in accordance with the submittal requirements and review process set forth in Section 9.5-523 of the Code.

(b) Notwithstanding Section 9.5-532 of the Code, when considering an application for a variance from the standards of this division, the following shall be the exclusive factors considered:

(1) Whether failure to grant the variance would prohibit or have the effect of prohibiting the provision of personal Wireless Communications Services by the applicant;

(2) Whether failure to grant the variance would unreasonably discriminate among providers of functionally equivalent personal Wireless Communications Services;

(3) Physical characteristics of the proposed Wireless Communications Facility for which the variance is requested;

(4) The importance to the community of the Wireless Communications Services to be provided if the proposed variance is granted;

(5) The compatibility of the proposed variance with adjacent land uses, the visual impact of the scale of the Facilities on adjacent properties, and the availability of alternative sites and technologies in light of existing permitted development in the area;

(6) Whether granting of the proposed variance will obviate the need for additional new Wireless Communications Facilities due to increased Collocation opportunities that would not be possible if the variance were not granted; and

(7) Whether granting of the proposed variance is necessary to ensure adequate public safety and emergency management communications.

(c) A variance may be granted under this Section exclusively for the following approval criteria set forth in this Division:

- (1) Setbacks;
- (2) Landscaping; ~~and~~
- ~~(3)~~ ~~(3)~~ Height; and
- (4) Environmental Design Criteria.

Section 11. Amendment to the Code. Section 9.5-434.14 of the Code is created to read as follows:

Sec. 9.5-434.14. Administrative deviations.

(a) Notwithstanding the provisions of Section 9.5-72(b)(3) of the Code, the City Manager or designee may approve a minor deviation from any development

approval granted pursuant to this Division, provided the deviation does not affect the safety of the Wireless Communications Facility.

(b) A minor deviation shall not exceed ten (10) percent of the applicable requirement, and may be granted exclusively for the following development criteria of this Division:

(1) Location: A minor deviation allowing the relocation of the Antennae and its supporting structure, including a Tower, Equipment Enclosure, and Ancillary Structures up to ten (10) percent of the distance shown on the approved site plan, or twenty-five feet, whichever is less. In no event, shall the relocation of the Antennae and its supporting structure, including a Tower, Equipment Enclosure, and Ancillary Structures result in an encroachment into the setbacks established in this Division;

(2) Development Area;

(3) Landscaping; and

(4) Height: A minor deviation for height of up to ten (10) percent of the approved plan, not to exceed an overall height of 250 feet, may be approved if technical evidence is submitted justifying to request.

(c) Any deviation in excess of that authorized by this Division shall be subject to the requirements of Section 9.5-72(b)(3) of the Code.

Section 12. **Amendment to the Code.** Section 9.5-434.15 of the Code is created to read as follows:

Sec. 9.5-434.15. Nonconforming Wireless Communications Facilities.

(a) All Wireless Communications Facilities which do not meet the requirements of this Division, existing as of the effective date of this Division shall be considered nonconforming uses and structures under Sections 9.5-143 and 9.5-144 of the Code.

(b) Notwithstanding the provisions of Subsection (a), the Replacement of, Collocation or the addition of Equipment Enclosures on an existing Wireless Communications Facility as provided in Sections 9.5-434.6(b) and 9.5-434.6(c) of this Division shall not be considered an expansion of a non-conforming structure.

Section 13. Amendment to the Code. Section 9.5-434.16 of the Code is created to read as follows:

Sec. 9.5-434.16. Application denial.

(a) Denial of any application shall be in writing and include written findings of fact.

(b) In addition to any other grounds for denial, any application under this Division may be denied to the extent necessary to preserve a prehistoric or historic district or site, building, structure or object included in or eligible for inclusion on the National Register of Historic Places.

Section 14. Repeal of Conflicting Provisions. Sections 9.5-434.1 through 9.5-434.5, of the Code, relating to Wireless Communications Facilities as existing immediately prior to the adoption of this Ordinance are hereby repealed in their entirety. Any other provision of the City Code that conflicts with this Ordinance is hereby repealed.

Section 15. 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 16. 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 17. 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 Manager or designee 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 18. 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 Greenman, who moved for its adoption. This motion was seconded by Councilman Mearns, and upon being put to a vote, the vote was as follows:


Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>

PASSED on first reading this 30th day of April, 2002.

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

Mayor John Bartus	<u>yes</u>
Vice Mayor Randy Mearns	<u>yes</u>
Councilman Frank Greenman	<u>yes</u>
Councilman John Repetto	<u>yes</u>
Councilman Pete Worthington	<u>yes</u>

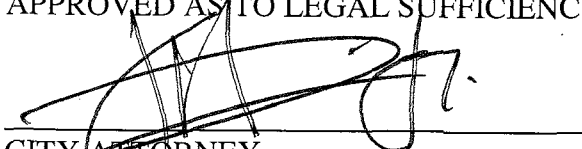
PASSED AND ADOPTED on second reading this 30th day of July, 2002.


JOHN BARTUS, MAYOR

ATTEST:

Katherine V. Selchan
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:


CITY ATTORNEY

SCANNED

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 02-07-14

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 August 12, 2002, the Department received for review City of Marathon Ordinance No. 02-07-14 which was adopted by the City of Marathon City Council on July 30, 2002 ("Ord. 02-07-14").
3. Ord. 02-07-14 amends the Section 9.5-434 of the City's Land Development Regulations regulating the placement, construction and modification of wireless communications facilities.
4. Ord. 02-07-14 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. 02-07-14 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. 02-07-14 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.

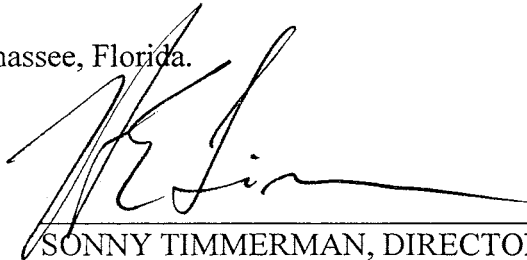
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

10. Ord. 02-07-14 is not inconsistent with the remaining Principles. Ord. 02-07-14 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-07-14 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.



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 17th day of September, 2002.


for Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, 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:

Jim Quinn, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee