

Sponsored by: Janke
Planning Commission Public Hearing Date: June 21, 2004
City Council Public Hearing Dates: June 22, 2004
July 13, 2004
Enactment Date: July 13, 2004

**CITY OF MARATHON, FLORIDA
ORDINANCE 2004-15**

**AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA
EXTENDING A MORATORIUM ON THE ACCEPTANCE OF
RESIDENTIAL RATE OF GROWTH APPLICATIONS THAT
SEEK DEVELOPMENT PERMITS TO DEVELOP PROPERTIES
CONTAINING HIGH QUALITY NATURAL AREAS AND
ADOPTING INTERIM DEVELOPMENT REGULATIONS
DEFERRING ROGO ALLOCACTIONS IN HIGH QUALITY
NATURAL AREAS UNTIL LDR AND COMPREHENSIVE PLAN
AMENDMENTS ARE DRAFTED AND ADOPTED BY THE CITY
COUNCIL OR ONE YEAR, WHICHEVER COMES FIRST**

WHEREAS, Goal 102 of the *City of Marathon Transitional Comprehensive Plan* (the “Transitional Plan”) requires the City of Marathon, Florida (the “City”) to direct future growth to lands most suitable for development and to conserve and protect environmentally sensitive lands; and

WHEREAS, Objective 102.3 of the Transitional Plan requires that new development occur where site disturbances and man’s activities have fewer adverse effects on natural vegetation; and

WHEREAS, the Florida Administrative Commission in 1996 enacted Rule 28-20.200 which created the “Work Program” in the Transitional Plan. The Work Program required, among other things, the preparation of a Carrying Capacity Study for the Florida Keys; and

WHEREAS, the “Work Program”, section B., requires the City to implement the Carrying Capacity Study by the adoption of all necessary Transitional Plan amendments to establish development standards to ensure that new development does not exceed the carrying capacity of the City’s environment; and

WHEREAS, the “Work Program” directs the City to initiate and complete a collaborative process for the adoption of Land Development Regulations (LDRs) and Transitional Plan amendments to strengthen the protection of terrestrial habitat; and

WHEREAS, the Carrying Capacity Study, completed in September 2002, concluded “that land development in the Florida Keys has surpassed the capacity of

upland habitats to withstand further development”; and

WHEREAS, the LDRs and Transitional Plan amendments to implement the protection of the terrestrial ecosystem requirements in Rule 28-18.200 are incomplete and will not be reviewed and adopted by July 13, 2003, deadline and the loss of valuable native habitat is continuing as development in these areas continue; and

WHEREAS, on June 10, 2003, the City adopted Ordinance 2003-10 establishing a moratorium on the acceptance of Rate of Growth (ROGO) allocation applications to develop areas that would receive negative environmental points (the “Deferment”) while staff prepares amendments to the Transitional Plan and LDRs to further protect the terrestrial ecosystem; and

WHEREAS, the Deferment protects the natural environment while providing additional time to incorporate a comprehensive legal and financial review of the proposed amendments to the Transitional Plan and to identify dedicated funding sources for land acquisition; and

WHEREAS, Ordinance 2003-10 is scheduled to expire on July 13, 2004, unless extended by the City;

WHEREAS, the City is in the process of adopting its new comprehensive plan and LDRs that will further protect the terrestrial ecosystem, but will not be finished with this process prior to July 13, 2004; and

WHEREAS, the City Council desires to extend the Deferment for another year until July 13, 2005; 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:

Section 1. No ROGO allocation applications within areas, which are classified as high quality hammocks, or areas with known threatened or endangered species shall be accepted or processed by the Planning Department effective July 13, 2003. It is the specific legislative intent of the City that during the approval process of this Ordinance by the State Department of Community Affairs that the Deferment established by Ordinance 2003-10 remains in effect.

Section 2. The Deferment established by this Ordinance is temporary and shall automatically dissolve upon the adoption of new LDRs strengthening the protection of the terrestrial habitat, the formulations of which shall be expeditiously pursued, or July

13, 2005, whichever comes first unless the Deferment is extended in accordance with applicable law.

Section 3. No ROGO allocation awards shall be made on any applications within areas, which are classified as high quality hammocks, or areas with known threatened or endangered species with a ROGO entry date of July 13, 2003, or later.

Section 4. All vacant lands within areas within the City, which are classified as high quality hammocks, or areas with know threatened or endangered species areas shall be eligible for a ROGO land dedication under Policy 101.5.4(5) and 101.5.5(4) effective the date of this Ordinance.

Section 5. The City Manager is directed to have the Planning Department immediately begin working to prepare the draft LDRs and other supporting studies in cooperation with the Planning Commission.

Section 6. The provisions of this Ordinance are declared to be severable. If any section, subsection, sentence, clause, or phrase of this Ordinance shall be for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

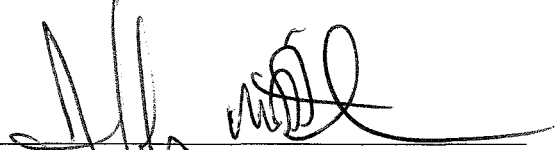
Section 7. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

Section 8. The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 9. This Ordinance shall be effective upon approval by the State Department of Community Affairs, pursuant to Chapter 380, *Florida Statutes*.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 13th day of July 2004.

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Rinkus, Mayor

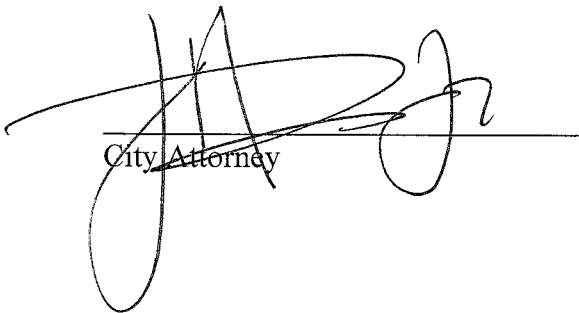
AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

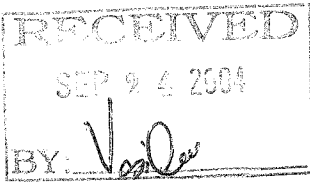


Cindy L. Ecklund
City Clerk

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



City Attorney



**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2004-15

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2003), 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 July 16, 2004, the Department received for review City of Marathon Ordinance No. 2004-15 that was adopted by the City of Marathon Board of City Commissioners on July 13, 2004 ("Ord. 2004-15"). Ord. 2004-15 extends the previous moratorium on accepting certain ROGO applications that propose development in high quality natural areas until certain comprehensive plan and LDR policies are adopted or one year, whichever date is earlier.
3. Ord. 2004-15 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2003).
5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2003) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.
6. "Land development regulations" include local zoning, subdivision, building and other

6. “Land development regulations” include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2003). The regulations adopted by Ord. 2004-15 are land development regulations.

7. 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”) as 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.

8. Ord. 2004-15 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.

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

9. Ord. 2004-15 is not inconsistent with the remaining Principles. Ord. 2004-15 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2004-15 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.



VALERIE J. HUBBARD, 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.

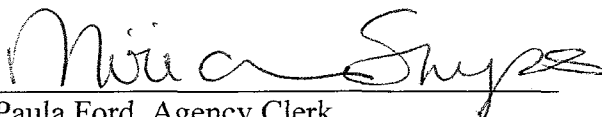
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 22nd day of September, 2004.


Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Cindy Ecklund, City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

Mike Puto
Acting City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

John Herin, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Suite 2200 Museum Tower
150 West Flagler Street
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator
Timothy E. Dennis, Assistant General Counsel