

**Sponsored By:** MMM Development Company, LLC

**Introduction Date:** November 21, 2005

**Public Hearing Date:** November 21, 2005

November 22, 2005

December 13, 2005

**Enactment Date:** December 13, 2005

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2005-22**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE FUTURE LAND USE MAP (FLUM) FROM MIXED USE COMMERCIAL (MUC) TO RESIDENTIAL HIGH (RH) FOR PROPERTY DESCRIBED AS PART OF GOVERNMENT LOT 1, SECTION 11, TOWNSHIP 66 SOUTH, RANGE 33 EAST, KEY VACA, MONROE COUNTY, FLORIDA, HAVING A REAL ESTATE NUMBER OF 103560-000201; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; 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 STATE DEPARTMENT OF COMMUNITY AFFAIRS**

**WHEREAS**, pursuant to the provisions of Chapters, 163, 166 and 380 *Florida Statutes*, the City of Marathon, Florida (the "City") proposes via "small scale map amendment" to amend the City Future Land Use Map (the "FLUM") to change the future land use district designation of property owned by MMM Development Company, LLC, legally described in Exhibit "A"; and

**WHEREAS**, amending the FLUM designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"); and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 9.5-22 and 9.5-511 of the Code, the Planning Commission sitting as the Local Planning Agency has publicly considered the proposed FLUM amendment at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed FLUM amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed FLUM amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding

development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Section 9.5-511 of the Code and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed FLUM amendment, in accordance with State law.

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

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

**Section 2.** In accordance with State law and the Code, the FLUM designation of the Property is amended from its current designation of Mixed Use Commercial (MUC) to Residential High (RH).

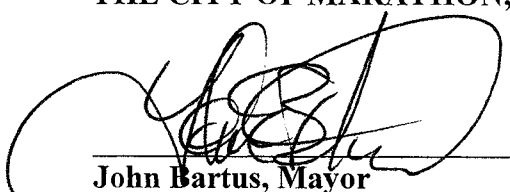
**Section 3.** The City shall timely transmit the revised Map reflecting the FLUM amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the "Department"), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 4.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 6.** That this Ordinance shall be effective immediately upon approval by the Department pursuant to Chapter 380, *Florida Statutes*.


**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA**, this 13<sup>th</sup> day of December, 2005.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**John Bartus, Mayor**

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

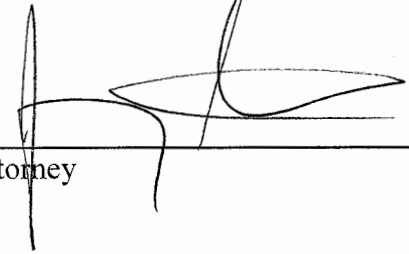
**ATTEST:**



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Cindy L. Ecklund  
City Clerk

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



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City Attorney

## EXHIBIT "A"

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### Legal Description

A parcel of land in Section 11, Township 66 South, Range 32 East, Key Vaca, Monroe County, Florida, more particularly described as follows:  
Begin at the intersection of the East line of said Section 11 and the Southeasterly right of way line of U.S. Highway 1; thence South along the said East line of Section 11 for 285 feet thence thence West for 231.83 feet; thence North for 191.43 feet to the said Southeasterly Right-of-Way Line of U.S. Highway No. 1; thence N. 68°01'11" E along the said Southeasterly Right-of-Way Line of U.S. Highway No. 1 for 250.00 feet to the Point of Beginning;  
Containing 55,225 s.f. or 1.27 acres, more or less.

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON SMALL SCALE PLAN  
AMENDMENT ADOPTED BY  
CITY OF MARATHON ORDINANCE  
NO. 2005-22

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**FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 163.3187(1)(c), 380.05(6) and (11), *Fla. Stat.*, (2005), approving a small scale plan amendment and land development regulations adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

**FINDINGS OF FACT**

1. The City of Marathon is a designated area of critical state concern.
2. On December 23, 2005, the Department received for review City of Marathon Ordinance No. 2005-22, which was adopted by the City of Marathon City Commission on December 13, 2005 ("Ord. 2005-22"). Ord. 2005-22 authorizes a small scale comprehensive plan amendment for the purposes of affordable housing as provided under section 163.3187(1)(c)1.e., *Fla. Stat.*. The amendment will change 1.27 acres designated Mixed Use Commercial, with a density of 10-15 affordable housing dwelling units per acre on the Marathon Land Use Map to Residential High, with a maximum density of 15-25 affordable housing dwelling units per acre.
3. Ord. 2005-22 authorizes a Future Land Use Map Amendment from Mixed Use Commercial to Residential High for property located along Overseas Highway at approximately 71<sup>st</sup> Street Ocean, and legally described as part of Government Lot 1, Section 11, Township 66 South, Range 33 East, Key Vaca, Monroe County, Florida, having a Real Estate Number of 103560-000201.

4. Ord. 2005-22 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

6. The Department is required to approve or reject small scale plan amendments which involve the construction of affordable housing units and land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to Areas of Critical State Concern. 163.3187(1)(c)1.e., *Fla. Stat.*, (2005).

7. The City of Marathon is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2005) and Rule 28-36.001, *Fla. Admin. Code*.

8. "Local comprehensive plan" means any or all local comprehensive plans or elements or portions thereof prepared, adopted, or amended pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, as amended. § 380.031(10), *Fla. Stat.* (2005). Ord. 2005-22 adopts an amendment to the local comprehensive plan.

9. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2005). The regulations adopted by Ord. 2005-22 are land development regulations.

10. All small scale amendments to the local comprehensive plan adopted within an area of critical state concern and all land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the "Principles"). § 380.05(6), *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 for the City of Marathon Area of Critical State Concern are set forth in Rule 28-36.003(1), *Fla. Admin. Code*.

11. Ord. 2005-22 promotes and furthers the following Principles in Rule 28-36.003(1):

(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.

(j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.

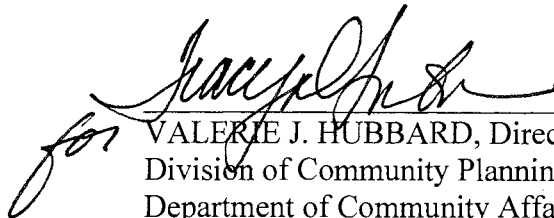
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

12. Ord. 2005-22 is not inconsistent with the remaining Principles. Ord. 2005-22 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2005-22 is found to be consistent with the Principles for Guiding Development of the City of Marathon Are 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.

  
for 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.

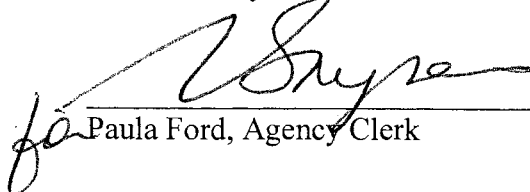
A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.



**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 8<sup>th</sup> day of January, 2006.

  
\_\_\_\_\_  
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  
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  
Richard E. Shine, Assistant General Counsel