Introduction Date: December 12, 2006
Public Hearing Dates December 12, 2006 and December 21, 2006
Enactment date: December 21, 2006

CITY OF MARATHON, FLORIDA
ORDINANCE 2006-34

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING AND RESTATING ARTICLE X "IMPACT FEES" OF THE CODE, PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR SEVERABILITY; PROVIDING FOR THE INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (the "DEPARTMENT"); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW

WHEREAS, the City of Marathon (the "City"), shortly after its incorporation, adopted the Monroe County Code in its entirety, including Article X dealing with impact fees; and

WHEREAS, the City contracted with Dr. James C. Nicholas of RRC Associates to conduct a detailed impact fee study and Dr. Nicholas has made recommendations to the City Council with respect to the types of impact fees to assess and the appropriate amounts; and

WHEREAS, pursuant to Florida Statutes, the City has the authority to assess impact fees on new development and redevelopment to address the infrastructure needs created by such development and redevelopment; and

WHEREAS, the City Council wishes to amend and restate Article X to reflect the recommendations made in the study and thereby create an impact fee program that more accurately reflects the impact of development on the City of Marathon;

WHEREAS, the City Council finds the adoption of this Ordinance is in the best interest of the City and complies with applicable State laws and rules; 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 Areas of Critical State Concern.

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

Section 1. Article X of the Code of the City of Marathon, Florida is hereby amended and restated to read as follows:

ARTICLE X.
IMPACT FEES

Sec. 9.5-490. Impact fee procedures.

The purposes and intent of the impact fee procedures are:

(a) To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new development and redevelopment.

(b) To facilitate implementation of goals, objectives and policies set forth in the City of Marathon Comprehensive Plan and Land Development Regulations relating to assuring that new impact-producing development and redevelopment contributes its fair share towards the costs of capital improvements reasonably necessitated by such growth.

(c) To ensure that new development and redevelopment is reasonably benefited by capital improvements made with proceeds of impact fees.

(d) To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

Sec. 9.5-490.1. Definitions.

The words or phrases used herein shall have the meaning prescribed in the City of Marathon Land Development Regulations, except as otherwise indicated herein:

"Applicant" means and refers to the property owner, or duly designated agent of the property owner, of land on which a request for a building permit is received by the City and on which an impact fee is due or has been paid.

"Appropriation" or "to appropriate" means and refers to an action by the Council to identify specific capital improvements for which impact fee funds may be utilized. Appropriation shall include, but shall not necessarily be limited to: inclusion of a capital improvement in the adopted City budget, capital improvements program or City road plan; execution of a contract or other legal encumbrance for a capital improvement using impact fee funds in whole or in part; and actual expenditure of impact fee funds through payments made from an impact fee account.

"Capital improvements" means and refers to those improvements as defined in Section 9.5-4 and those improvements related to fire protection service, and expressly includes amounts appropriated in connection with the planning, design, engineering and construction of such improvements; planning, legal, appraisal and other costs related to the acquisition of land, financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the capital improvement. Capital improvements eligible for impact fee funding, in whole or in part, shall be set forth in greater detail in the resolutions adopting the specific impact fee schedules.

"Commercial retail use" means and refers to uses that sell goods or services at retail as that term is defined in Section 9.5-4.

"District" or "Impact fee district" means and refers to a defined geographic area or subarea of the City within which impact fees are collected, appropriated, and expended for capital improvements serving new development within such area or subarea.

"Dwelling unit" means and refers to those residential units as defined in Section 9.5-4. The term "dwelling unit" is applicable to both permanent and transient residential development.

"Governmental agency" means those entities as defined in Section 9.5-4.

"Impact fee" means and refers to a monetary exaction imposed on a pro rata basis in connection with and as a condition of development approval and calculated to defray all or a portion of the costs of capital improvements required to accommodate new impact-producing development and redevelopment and reasonably benefiting such development.

"Impact-producing" means and refers to any development which has the effect of:

(a) Increasing the need or demand for a capital improvement; or

(b) Utilizing existing capital improvement capacity; or

(c) Causing an existing capital improvement level of service standard to decline.

"Industrial use" means and refers to uses devoted to manufacturing and related operations as that term is defined in Section 9.5-4 and expressly includes heavy industrial uses as that term is defined in Section 9.5-4 and light industrial uses as that term is defined in Section 9.5-4.

"Institutional use" means and refers to uses that serve the community as that term is defined in Section 9.5-4 and expressly includes hospitals.

"Marinas" means any recreational facility established for the purpose of boating, fishing, in-water or dry storage of boats, food services, transportation, guides, boat rentals, and other customary accessory uses and facilities.

"Multiple uses" means and refers to a development consisting of both residential and nonresidential uses or one (1) or more different types of nonresidential uses on the same site or part of the same development project.

"Nonresidential development" means and refers to Commercial retail use; Marinas; destination resort as that term is defined in Section 9.5-4; hotel as that term is defined in Section 9.5-4; room, hotel or motel as those terms are defined in Section 9.5-4; Industrial use; Institutional uses; Office; Shopping centers and Public buildings.

"Office" means and refers to a use where business, professional or governmental services are made available to the public as that term is defined in Section 9.5-4.

"Public buildings" means those buildings and uses as defined in Section 9.5-4.

"Residential development" means and refers to a residence or residential use as that term is defined in Section 9.5-4; Dwelling units; Campground spaces as defined in Section 9.5-4; mobile homes as defined in Section 9.5-4; institutional residential use as defined in Section 9.5-4, except hospitals; live-aboard vessels as defined in Section 9.5-4; employee housing as defined in Section 9.5-4; permanent residential unit as that term is defined in Section 9.5-4; and affordable housing as that term is defined in Section 9.5-4.

"Shopping center" means and refers to commercial retail and professional services developments as defined in Section 9.5-4.

"Tourist housing development" means and refers to the development of tourist housing units as that term is defined in Section 9.5-4.

Sec. 9.5-490.2. General provisions; applicability.

(a) Term: Article X shall remain in effect unless and until repealed, amended or modified by the Council in accordance with applicable state law and local ordinances and procedures.

(b) Annual Review:

(1) At least once every year prior to Council adoption of the annual budget and capital improvements program, the Director of Planning shall prepare a report on the subject of impact fees.

(2) The report shall include the following:

a. Recommendations on amendments, if appropriate, to this article or to resolutions imposing and setting specific impact fees for particular categories of capital improvements.

b. Proposed changes to the capital improvements element and/or an applicable capital improvements program, including the identification of capital improvement projects anticipated to be funded wholly or partially with impact fees.

c. Proposed changes to impact fee schedules as set forth in the resolutions imposing and setting specific impact fees.

d. Proposed changes to levels of service.

e. Proposed changes in calculation methodology.

f. Other data, analysis or recommendations as the Director of Planning may deem appropriate, or as may be requested by the Council.

(3) Submission of impact fee annual report: The Director of Planning shall submit the impact fee annual report to the City Council which shall receive the report and take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

(c) Effect of Annual Review: This annual review may, in whole or in part, form the basis for the recommendations to the Council and Council actions to repeal, amend or modify this Article X and/or fee schedules; however, the Director of Planning may cite and the Council may rely upon such other data, information, reports, analyses and documents relevant to such decisions as may be available.

(d) Amendments: Changes to this Article X must be made by ordinance; changes to resolutions imposing and establishing specific impact fee schedules may be made by resolution of the Council. Nothing herein precludes the Council or limits its discretion to amend this Article X or the resolutions imposing specific impact fee schedules at such other times as may be deemed necessary.

(e) Affected Area:

(1) Impact fee district: Impact fees shall be imposed on impact-producing development within the City of Marathon Impact Fee District, comprised of the entire area of the City of Marathon, Monroe County, Florida,

(f) Type of Development Affected: This Article X shall apply to all impact-producing residential and nonresidential development for which a building permit is required by this chapter.

(g) Type of Development Exempt from Paying Impact Fees:

(1) Replacement residential unit: Redevelopment or rehabilitation which replaces but which does not increase square footage of legally permitted residential dwelling units existing on the site prior to redevelopment or rehabilitation.

(2) Replacement nonresidential development: Redevelopment or rehabilitation which replaces, but which does not increase the legally permitted floor area above that existing on the site prior to redevelopment or rehabilitation nor changes the use to one which has a greater impact-producing effect with respect to any capital improvement than that existing on the site prior to redevelopment or rehabilitation.

(3) Public capital improvements (as defined by Section 9.5-4).

(4) Public buildings (as defined by Section 9.5-4) owned and operated by a governmental agency that is statutorily exempt from the payment of locally adopted impact fees.

(5) Any other use, development, project, accessory, structure, building, fence, sign or other activity that is not impact producing.

(6) Affordable or employee housing units (as defined by Section 9.5-4) for which an affordable housing deed restriction has been recorded on the chain of title.

(h) Minimum Fee Requirements: Upon receipt of an application, the Director of Planning is hereby authorized to establish a minimum fee requirement of not less than the amount which would be imposed on one thousand (1,000) square feet of building space of industrial development, for certain proposed nonresidential developments upon a finding that (a) the impact produced by the proposed use is de minimis, (b) that the proposed use is not included in the applicable impact fee schedule nor is it similar to any listed use, and (c) that the cost of an individual impact analysis would outweigh the impact fee otherwise calculated to be due. The burden shall be on the applicant to establish that the required findings as set forth above will be met with respect to the proposed use.

(i) Effect of Payment of Impact Fees on a Determination of Concurrency; a Dwelling Unit Allocation; and Other Land Development Regulations:

(1) The payment of impact fees shall not entitle the applicant to a determination of concurrency except as otherwise provided in this chapter. The requirements for a determination of concurrency is a separate, independent and additional requirement imposed by this chapter.

(2) The payment of impact fees shall not entitle the applicant to a residential dwelling unit allocation award pursuant to Sections 9.5-120 through 9.5-124. The requirement for a residential dwelling unit allocation award is a separate, independent and additional requirement imposed by this chapter.

(3) Neither this Article X nor the specific impact fee resolutions shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of this chapter, all of which shall be operative and remain in full force and effect without limitation.

Sec. 9.5-490.3. Procedures for imposition, calculation and collection of impact fees.

(a) Imposition: No building permit shall be issued by the City for impact-producing residential or nonresidential development unless the applicant has paid the applicable impact fees in accordance with these procedures and requirements.

(b) The City Council shall set the specific impact fee schedules by resolution at the time of the adoption of the annual budget or at such other times as may be deemed necessary.

(c) Calculation:

(1) Upon receipt of an application for a building permit, the Director of Planning shall determine whether the proposed project is impact-producing and, if so:

a. Whether it is residential or nonresidential,

b. The specific category of residential or nonresidential development, and

c. The number of square feet of floor area.

(2) After making these determinations, the Director of Planning shall calculate the demand for capital improvements added by the proposed project and calculate the applicable impact fee by multiplying the demand of the proposed project by the impact fee per square foot or demand unit, as the case may be, in effect at the time of building permit issuance, less and applicable credit.

(3) If the type of land use proposed for development is not expressly listed in the specific impact fee resolution, the Director of Planning shall:

a. Identify the most similar land use type listed and calculate the impact fee based on the impact fee per square foot or demand unit, as the case may be, for that land use, or

b. Identify the broader land use category within which the specific land use would fit and calculate the impact fee based on the impact fee per square foot or demand unit, as the case may be, for that land use category.

(4) If neither of the alternatives set forth above is appropriate for the proposed development, the demand may be determined by an individual impact analysis performed by the applicant if authorized by the specific impact fee resolution and if requested by the applicant and approved by the Director of Planning or if requested by the Director of Planning. Any individual impact analysis shall conform to the requirements of the applicable impact fee resolution and subsection (f) of this section.

(5) An applicant may request a nonbinding estimate of impact fees due for a particular development at any time.

(6) The calculation of impact fees due from a multiple-use development shall be based upon the aggregated demand for each capital improvement generated by each land use type in the proposed development.

(7) The calculation of impact fees due from a phased development shall be based upon the demand generated by each specific use for which a separate building permit application is received.

(8) All impact fees shall be calculated based on the impact fee per square foot or demand unit, as the case may be, in effect at the time of building permit issuance.

(d) Credits:

(1) Credits against the amount of an impact fee due from a proposed development shall be provided for the dedication of land and/or the provision of capital improvements by an applicant when such land or capital improvements provide additional capacity to meet the demand generated by the development and when either:

a. The costs of such land or improvements have been included in the fee calculation methodology for the applicable category of capital improvement; or

b. The land dedicated or capital improvement provided is determined by the Director of Planning to be a reasonable substitute for the cost of improvements which are included in the applicable fee calculation methodology.

(2) Credit applications shall be made on forms provided by the City and shall be submitted at or before the time of building permit application. The application shall be accompanied by relevant documentary evidence indicating the eligibility of the applicant for the credit. When a credit application accompanies a building permit application, the Director of Planning shall calculate the applicable impact fee without the credit and shall then determine whether a credit is due and, if so, the amount of the credit. The credit shall be applied against the impact fee calculated to be due; however, in no event shall a credit be granted in an amount exceeding the impact fee due.

(3) Credit for dedication of land or provision of capital improvements shall be applicable only against impact fees for the same category of capital improvements. Even if the value of the dedication of land or provision of a capital improvement exceeds the impact fee due for that capital improvement category, the excess value may not be transferred to impact fees calculated to be due from the applicant for other categories of capital improvements nor may the excess value be transferred to other applicants or properties.

(e) Collection: The Director of Planning shall collect all applicable impact fees at the time of building permit issuance unless:

(1) The applicant is determined to be entitled to a full credit; or

(2) The applicant is not subject to the payment of impact fees; or

(3) The applicant has taken an appeal and a bond or other surety in the amount of the impact fee, as calculated by the Director of Planning, has been posted with the City.

(f) Individual Impact Analysis:

(1) The applicant may request, and the Director of Planning may approve or require the submittal by the applicant of an individual impact analysis if the proposed impact-producing development is a land use type generating unusual demand for one (1) or more types of capital improvements or is a land use type for which the City does not have adequate and current demand data.

(2) An individual impact analysis shall include:

a. The application for building permit, including all information described in subsection (c)(1) of this section.

b. The demand generated by the impact-producing development and the methodology used to calculate the demand.

c. Copies of any recorded conditions on the subject property operating to limit the demand for capital improvements generated by the proposed development.

d. Information and data which may be required by a specific impact fee resolution.

e. Any additional information, data or analysis deemed necessary by the Director of Planning.

(3) If authorized or required by the Director of Planning, the individual impact analysis may be submitted by the applicant at the time of building permit application or within a time period established by the Director of Planning.

(4) All costs of the preparation, submittal and review of an individual impact analysis, whether prepared at the request of the applicant or required by the Director of Planning, and whether performed by the City, the applicant, or a consultant, shall be borne by the applicant. These costs shall be itemized by the City and paid by the applicant upon completion of the individual impact analysis, but in no event later than at building permit issuance. The costs incurred shall be charged to the applicant regardless of whether the applicant proceeds to building permit issuance or whether the demand as calculated in the individual impact analysis is accepted or rejected by the Director of Planning.

(5) Within thirty (30) days of the receipt of an individual impact analysis, the Director of Planning shall provide a written determination of the demand

generated by the proposed development and may:

a. Find that the impact fee shall be calculated based on the demand as set forth in the individual impact analysis,

b. Find that the impact fee shall be calculated based on the demand, as set forth in the individual impact analysis, as modified by the Director of Planning, or

c. Find that the individual impact analysis does not support a different demand and, therefore, that the impact fee should be calculated based on the demand as calculated pursuant to the specific impact fee resolution.

The findings of the Director of Planning shall be set forth in writing and shall be provided to the applicant.

Sec. 9.5-490.4. Establishment of impact fee accounts; appropriation of impact fee funds; refunds.

(a) Impact Fee Accounts: An impact fee account shall be established by the City for each category of capital improvements for which impact fees are imposed. All impact fees collected by the City shall be deposited into the appropriate impact fee account or subaccount, which shall be interest-bearing accounts. All interest earned shall be considered funds of the account. The funds of these accounts shall not be commingled with other funds or revenues of the City. If an impact fee account has previously been established pursuant to a separate ordinance for deposit of impact fee funds, such account shall be deemed to be an impact fee account pursuant to this section. The City shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited and appropriated in accordance with this Article X and other applicable legal requirements.

(b) Appropriation of Impact Fee Funds.

(1) In general: Impact fee funds may be appropriated for capital improvements and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the City to finance such capital improvements.

(2) Restrictions on appropriations: Impact fees shall be appropriated only:

a. For the category of capital improvement for which they were imposed, calculated and collected; and

b. Within ten (10) years of the beginning of the fiscal year immediately succeeding the date of collection, unless such time period is extended as provided herein.

Impact fees shall not be appropriated for funding maintenance or repair of capital improvements nor for operational expenses.

(3) Appropriation of impact fee funds beyond ten years of collection: Notwithstanding subsection (d) of this section, impact fee funds may be appropriated beyond ten (10) years from the beginning of the fiscal year immediately succeeding the date of collection if the appropriation is for a capital improvement which requires more than ten (10) years to plan, design and construct and the demand for the capital improvement is generated in whole or in part by the development or the capital improvement will serve the proposed development.

(c) Procedure for Appropriation of Impact Fee Funds:

(1) The City, as part of the annual budget and capital improvements programming process, shall each year identify capital improvement projects anticipated to be funded in whole or in part with impact fees. The capital improvement recommendations shall be based upon the impact fee annual review set forth in Section 9.5-490.2(b) and such other information as may be relevant.

(2) The recommendations shall be consistent with the provisions of this Article X, the specific impact fee resolutions, applicable legal requirements, and guidelines to be adopted by the Council.

(3) The Council may include impact-fee-funded capital improvements in the adopted annual budget and capital improvements program. If included, the capital improvement description shall specify the nature of the improvement, the location of the improvement, the capacity to be added by the improvement, the service area of the improvement, the need/demand for the improvement and the timing of completion of the improvement.

(4) The Council may recommend impact-fee-funded capital improvements at such other times as may be deemed necessary and appropriate. Such improvements shall also be described, as set forth above, on a project description sheet.

(5) The Council shall verify that adequate impact fee funds are or will be available from the appropriate impact fee accounts for the capital improvements.

(d) Refunds:

(1) Abandonment of development after issuance of building permit: An applicant who has paid an impact fee for a proposed development for which the applicable building permit has expired pursuant to Section 9.5-115 or has been revoked pursuant to Section 9.5-116 shall be eligible to apply for a refund of impact fees paid.

(2) Abandonment of development after initiation of construction: An applicant who has paid an impact fee for a proposed development for which a building permit has been issued and construction initiated, but which is abandoned prior to issuance of a certificate of occupancy shall not be eligible for a refund unless the uncompleted building is completely demolished pursuant to a City demolition permit.

(3) Failure of City to appropriate impact fee funds within time limit: The current property owner may apply for a refund of impact fees paid by an applicant if the City has failed to appropriate the impact fees collected from the applicant within the time limits established in subsection (b)(2) and (3) of this section.

(4) Refunds shall be made only to the current owner of property on which the impact-producing development was proposed or occurred.

(5) Applications for refunds due to the abandonment of a development shall be made on forms provided by the City and shall be made within sixty (60) days following the expiration or revocation of the building permit or demolition of the structure. The applicant shall submit:

a. Evidence that the applicant is the property owner or the duly designated agent of the property owner;

b. The amount of the impact fees paid by capital improvements category and receipts evidencing such payments; and

c. Documentation evidencing the expiration or revocation of the building permit or demolition of the structure pursuant to a valid City-issued demolition permit.

Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. Upon receipt of a complete application for refund, the Director of Planning, within sixty (60) days, shall review the application and documentary evidence submitted by the applicant and make a determination of whether a refund is due. Refunds by direct payment shall be made within sixty (60) days following an affirmative determination by the Director of Planning. No interest shall be paid by the City with such refunds.

(6) Applications for refunds due to the failure of the City to appropriate fees collected from the applicant within the time limits established in subsection (b)(2) and (3) of this section shall be made on forms provided by the City and shall be made within one (1) year following the expiration of such time limit. The applicant shall submit:

a. Evidence that the applicant is the property owner or the duly designated agent of the property owner;

b. The amount of the impact fee paid and the capital improvement category for which a refund application is being made;

c. Receipts evidencing the impact fee payments; and

d. Description and documentation of the City's failure to appropriate impact fee funds for relevant capital improvements.

Upon receipt of a complete application for refund, the Director of Planning shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination of whether a refund is due within sixty (60) days. Refunds by direct payment shall be made within sixty (60) days following an affirmative determination by the Director of Planning. Refunds shall include a pro rata share of interest earned by the applicable impact fee account calculated at the average annual rate of interest for each of the years during which the applicant's impact fees were in the account divided by the number of years in which the fees were in the account.

(7) The City may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same category of capital improvements for development on the same property, or by other means subject to agreement with the property owner.

(8) Any fee payer may appeal the director's decision on a refund application by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning.

Sec. 9.5-490.5. Appeals.

(a) An appeal from any decision of the Director of Planning pursuant to this Article X shall be made to the City Council; however, notwithstanding the foregoing, if the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City attorney in an amount equal to the impact fee as calculated by the Director of Planning to be due, the building permit shall be issued. The filing of an appeal shall not stay the collection of the impact fee as calculated by the Director of Planning unless a bond or other sufficient surety has been provided.

(b) The burden of proof shall be on the appellant to demonstrate that the decision of the Director of Planning is erroneous.

Sec. 9.5-491. Fair share transportation impact fee.

(a) Purpose and Authority:

(1) The City Council for the City of Marathon has determined and recognized that the growth rate the City will experience through the year 2020 will necessitate a significant number of major road network improvements which make it necessary to regulate new land development activity generating traffic in order to increase the capacity of the City's road network system to maintain an acceptable level of service as determined on the basis of an average annual basis.

(2) In order to finance these new capital improvements, regulate traffic generation levels, and ensure that accommodating that growth is economically feasible, several combined methods of financing will be necessary, one (1) of which will require all new land development activity generating traffic to pay its pro rata share of the capital expansion costs that will be incurred to expand the City's road network system.

(3) Implementing such a regulatory scheme that requires a new land development activity generating traffic to pay a "Fair Share Fee," that does not exceed a pro rata share of the reasonably anticipated expansion costs of new roads created by the new land development activity, is the responsibility of the City of Marathon pursuant to section 163.3161 et seq., Florida Statutes, and is in the best interest of the public's health, safety and welfare.

(4) Providing and regulating arterial and other roads and related facilities to make them more safe and efficient, in coordination with a plan for the control of traffic, is also the recognized responsibility of the City through section 125.01(1)(m), Florida Statutes, and is in the best interest of the public's health, safety and welfare.

(5) It is not the purpose of this section to collect any money from new land development activity generating traffic in excess of the actual amount necessary to offset the demand on the City's road network system generated by the new land development activity. Existing residents will still be required to bear their appropriate share of the cost of the City's road network system.

(b) Payment of Fair Share Fee Prior to Issuance of Certificate of Occupancy: A fair share transportation fee shall be paid by any person, including any governmental agency, prior to receiving a certificate of occupancy for any new land development activity generating traffic or materially impacting existing traffic so as to create increased demand on the City's road network system.

(c) Establishment of Fee Schedule: Any person who shall initiate any new land development activity generating traffic or materially impacting existing traffic, except those preparing a traffic impact analysis pursuant to subsection (d) of this section, shall pay, prior to the issuance of a certificate of occupancy, a fair share transportation fee as established by resolution of the City Council.

(d) Individual Assessment of Impact of Land Development Activity on the Road Network: The Traffic Impact Analysis:

(1) Any person who shall initiate any land development activity generating measurable traffic or materially impacting existing traffic may choose to provide an individual assessment of the demand the proposed land development activity will place on the City's road network system in order to show that the capital expansion costs necessitated by the proposed land development activity are less than the fair share fee established in subsection (c) of this section.

(2) The individual assessment shall be undertaken through the submission of a traffic impact analysis that shall include the following information:

a. The projected trip generation rates for the proposed land development activity, on an average annual basis, and at a peak design hour basis. The trip generation rates for the same or similar land use types, or state or national trip generation rate information, if applicable.

b. The proposed trip length, trip distribution, and traffic assignment of the trips generated from the proposed land development activity onto the City's road network system. Trip length information shall be based upon local empirical surveys of similar land use types or trip length data compiled by the Director of Planning for average trip length for similar land use types. Trip distribution information shall be based upon the existing physical development activity, and projections of population and physical development consistent with the City's Comprehensive Plan.

c. The traffic assignment of trips generated by other approved land development activity in the area on the City's road network system.

d. An assessment of the capital expansion of the City's major road system necessitated by the proposed land development activity if it is to be maintained at level of service D on an average annual basis. Needed improvements shall be determined through the end of a twenty-year time horizon beginning with the year the project is "built out" or completed. Standard acceptable practices and methodological procedures in the transportation planning and engineering profession shall be used to determine the capital expansion of the City's road network system necessitated by the proposed land development activity.

e. An assessment of the costs of providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in Monroe County for the construction of a lane mile, and shall include related right-of-way costs, and the planning, design and engineering costs for the necessary capital improvements.

f. An assessment of the projected tax revenues that will be derived from the proposed land development activity that can be reasonably determined to be available to pay for new capital improvements to the City's road network system over the planning horizon.

g. The amount of any shortfall between the projected tax revenues and the capital expansion costs for the road network system necessitated by the new land development activity. Any shortfall shall be considered the proposed fair share transportation fee.

(3) The traffic impact analysis shall be prepared by qualified professionals in the field of transportation planning and engineering, impact analysis and economics, and shall be submitted to the Director of Planning.

(4) Within twenty (20) working days of receipt of a traffic impact analysis, the Director of Planning shall determine if it is complete. If the Director of Planning determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the Director of Planning shall take no further action on the traffic impact analysis.

(5) When the Director of Planning determines the traffic impact analysis is complete, he shall review it within twenty (20) working days, and shall approve the proposed fee if it is determined that the traffic information, traffic factors, and methodology used to determine the proposed fair share transportation fee are professionally acceptable and fairly assess the costs for capital improvements to the City's road network that are necessitated by the

proposed land development activity if the road network is to be maintained at level of service D on an average annual basis. If the Director of Planning determines the traffic information, traffic factors and methodology is unreasonable, the proposed fee shall be denied, and the developer shall pay the fair share transportation fee as established in subsection (c) this section.

(6) Any person may appeal the Director of Planning's decision on a traffic impact analysis by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning. In reviewing the Director of Planning's decision, the City Council shall use the standards established in this subsection.

(e) Time and Amount of Payment: No certificate of occupancy shall be issued until any applicable fair share transportation fee is paid. If, in the time between the date of the building permit application and the date of the request for a certificate of occupancy, the applicable fair share transportation fee amount is altered, the fee due shall be the lower of the two (2) amounts.

(f) Interpretation of the Section and Fee Schedule:

(1) Interpretation of all provisions of this section, including whether a proposed land development activity is identified in one of the land use types in the fee schedule established in subsection (c), shall be made by the Director of Planning.

(2) Any person who shall initiate any land development activity not identified in the fee schedule established in subsection (c) shall submit a traffic impact analysis to the Director of Planning for a determination of the fair share transportation fee for the proposed land development activity.

(3) The traffic impact analysis shall include the information outlined in subsection (d) and shall be reviewed in accordance with subsection (d).

(4) If the Director of Planning determines the traffic information, traffic factors and methodology used in the traffic impact analysis is unreasonable, he shall establish a fair share transportation fee for the proposed land development activity that is consistent with the cases of Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976) and Home Builders and Contractors Association of Palm Beach County v. the Board of County Councilers of Palm Beach County, 446 So.2d 140 (Fla. 4th DCA 1983) and the standards and criteria established in this section.

(5) Any person may appeal the Director of Planning's determination of the fair share transportation fee on any traffic impact analysis they submit by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning. In reviewing the Director of Planning's decision, the City Council shall use the standards established in subsection (d) and this section.

(g) Credits to the Fair Share Transportation Fee:

(1) The Director of Planning shall grant a credit against any fair share transportation fee imposed by this section upon any new land development activity generating traffic where the person initiating the land development activity has entered into an agreement with the City to construct capital roadway improvements which expand the City's road network by providing roadway improvements that are consistent with the Comprehensive Plan. A credit equal to the dollar value of the capital road improvement in the agreement shall be provided. No credit shall exceed the fair share transportation fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Director of Planning, which agreement shall include the following information:

a. A proposed plan of specific roadway improvements, prepared and certified by a duly qualified and licensed Florida road engineer; and

b. The projected costs for the suggested roadway improvements, which shall be based on local information for similar transportation improvements, along with the construction timetable for the completion thereof. Such estimated costs shall include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.

(3) The proposed credit agreement shall be prepared by qualified professionals in the fields of transportation planning and engineering, impact analysis and economics.

(4) Within twenty (20) working days of receipt of the proposed credit agreement, the Director of Planning shall determine if the proposal is complete. If it is determined that the proposed agreement is not complete, the Director of Planning shall send a written statement to the applicant outlining the deficiencies. The Director of Planning shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(5) Once the Director of Planning determines the credit agreement is complete, he shall review it within twenty (20) working days and shall approve the proposed credit agreement if it is determined that the proposed capital roadway improvement is consistent with the capital improvements in the Comprehensive Plan for the City's road network and the proposed costs for the suggested roadway improvement are professionally acceptable and fairly assess the cost for the capital improvement. If the Director of Planning determines that either the suggested capital improvement is not consistent with the proposed roadway improvement outlined in the Comprehensive Plan or that the proposed costs are not acceptable, he shall propose a suggested roadway improvement similar to that proposed, but consistent with the provisions of this section.

(6) If the proposed credit agreement is approved by the Director of Planning or if the recommended credit agreement is accepted by the applicant, a credit agreement shall be prepared and signed by the applicant and the City. It shall specifically outline the capital roadway improvements that will be constructed by the applicant, the time by which it shall be completed, and the dollar credit the applicant shall receive for construction of the capital roadway improvement.

(7) Any person may appeal the Director of Planning's decision on any credit agreement he submits, by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning. In reviewing the Director of Planning's decision, the City Council shall use the standards established in subsection (d).

(h) Review of the Fee Schedule: Prior to the adoption of the annual budget, the City Council shall receive a report from the Director of Planning on the fair share transportation fee schedule in subsection (c) and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to population projections, travel characteristics, road costs, inflation and other relevant factors.

(i) Use of Funds Collected:

(1) The City shall establish an appropriate accounting mechanism for insuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the City's road network system.

(2) Expenditure of fair share fees and trust accounts:

a. The funds collected by reason of the establishment of the fair share transportation fee shall be used solely for the purpose of acquisition, expansion and development of the road network system determined to be needed to serve new development, including but not limited to:

(i) Planning, design and construction plan preparation;

(ii) Right-of-way acquisition;

(iii) Construction of new through lanes;

(iv) Construction of new turn lanes;

(v) Construction of new bridges;

(vi) Construction of new drainage facilities in conjunction with new roadway construction;

(vii) Purchase and installation of traffic signalization;

(viii) Construction of new curbs, medians and shoulders;

(ix) Construction of new bicycle paths;

(x) Construction of new pedestrian pathways and sidewalks;

(xi) Installation of new landscaping in conjunction with any of the projects above.

Proceeds from the account shall be used exclusively for the capital expansion of the City's road net system in a manner consistent with the capital improvements plan of the Comprehensive Plan.

b. Any funds in the account on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained in the applicable account.

Sec. 9.5-492. Fair share community park impact fee.

(a) Intent and Authority:

(1) The City Council has determined and recognized that the growth rate the City will experience through the year 2020 will necessitate significant expansion of the community parks and recreational facilities in the City in order to maintain an acceptable level of active recreational opportunities for City residents.

(2) In order to finance these new capital improvements for community parks and recreational facilities, several combined methods of financing will be necessary, one (1) of which will require all land development in the City to pay a fair share park fee which is consistent with the principles established in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976) and Hollywood, Inc. v. Broward County, 431 So.2d 606 (Fla. 4th DCA 1983).

(3) Implementing such a regulatory and financing program is the responsibility of The City of Marathon pursuant to section 163.3161 et seq.; Florida Statutes, and section 125.01(1)(f), Florida Statutes, and is in the best interest of the public's health, safety and welfare.

(4) It is the purpose of this section to establish a regulatory system to assist in providing for new community parks needed to serve new growth and development new growth. Pursuant to this section, land development activity will be required to pay a fair share community park fee which shall not exceed a pro rata share of the reasonably anticipated costs of new community park and recreational facilities required by new growth.

(5) It is not the purpose of this section to collect any money from new residential development in excess of the actual amount necessary to offset the demand placed on new community parks and recreational facilities by the development.

(b) Time and Amount of Payment: No certificate of occupancy for a permanent or temporary residential unit shall be issued until any applicable fair share park fee is paid. If, in the time between the date of the building permit application and the date of the request for a certificate for occupancy, the applicable fair share park fee amount is altered, the fee due shall be the lowest of the two (2) amounts.

(c) Fair Share Park Fee To Be Imposed on New Residential Land Development Activity:

(1) Payment of fair share fee prior to issuance of certificate of occupancy: Any person who shall initiate any new residential land development activity that places an increased demand on the City's community park facilities shall pay prior to the issuance of a certificate of occupancy, either an alternate fee amount based upon the preparation of an individual assessment pursuant to paragraph (2) of this subsection or, a fare share park fee established by resolution of the City Council.

(2) Individual assessment of fiscal impact of land development activity on community park facilities: The community park impact analysis:

a. Any person who shall initiate any land development activity that places a demand on community park and recreational facilities may choose to provide an individual assessment of the demand the proposed land development activity will place on the City's community parks in order to show the capital expansion costs necessitated by the proposed land development activity is less than the fair share fee established in this subsection (c).

b. The individual assessment shall be undertaken through the submission of a community park impact analysis which shall include the following information:

(i) The projected use of community park and recreational facilities by the proposed land development activity. This projection shall be based upon either local empirical surveys, or state or national information.

(ii) An assessment of the capital expansion of the City's community park and recreational facilities necessitated by the proposed land development, if those facilities are to be maintained at standards consistent with the Comprehensive Plan. Standard acceptable practices and methodological procedures in park planning and impact analysis shall be used to determine the capital expansion of the City's community park and recreational facilities necessitated by the proposed land development activity.

(iii) An assessment of the costs for providing the capital expansion necessitated by the proposed land development activity. The cost figures used shall be based upon recent empirical information of the costs in Monroe County for acceptable park acreage, the construction costs for park equipment outlined in the Comprehensive Plan, and the planning, design and engineering costs for the necessary capital improvements.

(iv) An assessment of the projected tax revenues that will be derived from the proposed land development activity that can be reasonably determined to be available to pay for new capital improvements to the City's community park and recreational facilities.

(v) The amount of any shortfall between the projected tax revenues and the capital expansion costs for the community park and recreational facilities necessitated by the new land development activity. Any shortfall shall be considered the proposed fair share park fee.

c. The community park impact analysis shall be prepared by qualified professionals in the field of community impact analysis and economics, and shall be submitted to the Director of Planning.

d. Within twenty (20) working days of receipt of a community park impact analysis, the Director of Planning shall determine if it is complete. If the Director of Planning determines the application is not complete, he shall send a written statement specifying the deficiencies by mail to the person submitting the application. Unless the deficiencies are corrected, the Director of Planning shall take no further action on the community park impact analysis.

e. When the Director of Planning determines the community park impact analysis is complete, he shall review it within twenty (20) working days, and shall approve the proposed fee if it is determined that the methodology used to determine the proposed fair share park fee fairly assesses the costs for capital improvements to the City's community park and recreational facilities that are necessitated by the proposed land development activity if the City's community park and recreational facilities are going to be maintained at the level of services established in the Comprehensive Plan. If the director determines the methodology is unreasonable, it shall be denied, and the developer shall pay the fair share parks fee as established in this subsection.

f. Any person may appeal the Director of Planning's decision on any community park impact analysis he submits by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning. In reviewing the Director of Planning's decision, the City Council shall use the standards established in this section.

(d) Credits to the Fair Share Park Fee:

(1) Where the person initiating the land development activity has entered into an agreement with the City to dedicate land for a community park or recreational facility, the Director of Planning shall grant a credit against any fair share park fee imposed by this section upon any new land development activity placing a demand on the City's community park and recreational facilities in an amount equal to the dollar value of the land dedication. No credit shall exceed the fair share park fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Director of Planning, which agreement shall include the following information:

a. The proposed land or plan of park improvement prepared and certified by a duly qualified and licensed Florida engineer; and

b. The assessed value of the proposed land dedication.

(3) The proposed credit agreement shall be prepared by qualified professionals in the fields of park planning and real property appraisal.

(4) Within twenty (20) working days of receipt of the proposed credit agreement, the Director of Planning shall determine if the proposal is complete. If it is determined that the proposed credit agreement is not complete, the Director of Planning shall send a written statement to the applicant outlining the deficiencies. The director shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(5) Once the Director of Planning determines the credit agreement is complete, he shall review it within twenty (20) working days, and shall approve the proposed credit agreement if it is determined that the proposed land dedication is consistent with the capital improvements outlined in the Comprehensive Plan for the City's community park facilities, and the proposed value of the land dedication is professionally acceptable. If the director determines that either the proposed land dedication or the value of the land dedication is not consistent with the Comprehensive Plan, or that the proposed costs are not acceptable, he shall deny the credit agreement and the applicant shall pay the fair share park fee.

(6) If the proposed credit agreement is approved by the Director of Planning, a credit agreement shall be prepared and signed by the applicant and the City. It shall specifically outline the land dedication that will be made by the applicant, and the dollar credit the applicant shall receive for the dedication.

(7) Any person may appeal the Director of Planning's decision on any credit agreement he submits, by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning. In reviewing the Director of Planning's decision, the City Council shall use the standards established in subsection (c) of this section.

(e) Review of the Section and Fee Schedule: Prior to the adoption of the annual budget, the City Council shall receive a report from the Director of Planning reviewing the fair share park fee schedule in subsection (c) and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to population projections, park equipment costs, inflation and other relevant factors.

(f) Use of Funds Collected:

(1) The City shall establish an appropriate accounting mechanism for ensuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the City's community park facilities.

(2) Expenditure of fair share fees in account:

a. Any funds not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained. These moneys shall be utilized for the capital expansion of the City's community park facilities in a manner consistent with the capital improvements plan in the Comprehensive Plan.

b. Each year, at the time the annual City budget is reviewed, the Director of Planning shall propose appropriations to be spent from the account. Any amounts not appropriated from the account, together with any interest earnings, shall be carried over in the specific account to the following fiscal period.

Sec. 9.5-493. Fair share conservation land acquisition impact fee.

(a) Purpose and Authority:

(1) The City Council has determined and recognized that the growth rate the City will experience through the year 2020 will necessitate a significant capital expenditure of the City funds in order to preserve conservation land and open space for City residents. Further, the City's Comprehensive Plan requires the acquisition of land and easements to preserve and protect natural habitats.

(2) In order to finance these conservation acquisitions, several combined methods of financing will be necessary, one (1) of which will require all residential and non residential land development in the City to pay a fair share conservation land acquisition fee which is consistent with the principles established in Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

(3) Implementing such a regulatory and financing program is the responsibility of the City of Marathon in order to carry out this chapter and the Comprehensive Plan pursuant to section 163.3161 et seq., Florida Statutes, and section 125.01(1)(f), Florida Statutes, and is in the best interest of the public's health, safety and welfare.

(4) It is the purpose of this section to establish a regulatory system to assist in providing funding for the acquisition of conservation land. Pursuant to this section, all land development in the City will be required to pay a fair share conservation land acquisition impact fee which does not exceed a pro rata share of the reasonably anticipated costs for the acquisition of conservation land.

(5) It is not the purpose of this section to collect any money from any new development in excess of the actual amount necessary to preserve conservation land and open space in the city.

(b) Time and Amount of Payment: No certificate of occupancy shall be issued for any structure until the applicable fair share conservation land acquisition fee is paid. If, in the time between the date of the building permit application and the date of the request for a certificate of occupancy, the applicable fair share conservation land acquisition fee amount is altered, the fee due shall be the lower of the two (2) amounts.

(c) Fair Share Conservation Land Acquisition Fee To Be Imposed on New Land Development Activity:

(1) Payment of fair share fee prior to issuance of certificate of occupancy: Any person who shall initiate any new or expanded land development activity shall pay, prior to the issuance of a certificate of occupancy, a fair share conservation land acquisition fee as established by resolution of the City Council.

(d) Credits to the Fair Share Conservation Land Acquisition Fee:

(1) Where the person initiating the land development has entered into an agreement with the City to dedicate land for conservation purposes, the Director of Planning shall grant a credit against any fair share conservation land acquisition fee imposed by this section upon any new land development activity in an amount equal to the dollar value of the dedicated land. No credit shall exceed the fair share conservation land acquisition fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Director of Planning, which agreement shall include the following information:

a. The proposed donation of land; and

b. The projected dollar value for the suggested donations which shall be based on local information of similar land.

(3) The proposed credit agreement shall be prepared by qualified professionals in the fields of planning, impact analysis and economics.

(4) Within twenty (20) working days of receipt of the proposed credit agreement, the Director of Planning shall determine if the proposal is complete. If it is determined that the proposed credit agreement is not complete, the director shall send a written statement to the applicant outlining the deficiencies. The Director of Planning shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(5) Once the Director of Planning determines the credit agreement is complete, he shall review it within twenty (20) working days, and shall approve the proposed credit agreement if it is determined that the proposed donation is consistent with the capital improvements outlined in the Comprehensive Plan for the City's conservation lands and open space, and the proposed valuation of the donation is professionally acceptable. If the director determines that either the proposed donation is not consistent with the Comprehensive Plan, or that the proposed costs are not acceptable, he shall deny the credit agreement and the applicant shall pay the fair share conservation land acquisition fee.

(6) If the proposed credit agreement is approved by the Director of Planning, a credit agreement shall be prepared and signed by the applicant and the City. It shall specifically outline the donation that will be made by the applicant and the dollar credit the applicant shall receive for the donation.

(7) Any person may appeal the Director of Planning's decision on any credit agreement he submits by filing a petition with the City Council within thirty (30) days of a decision by the director. In reviewing the director's decision, the City Council shall use the standards established in subsection (c) of this section.

(e) Review of the Fee Schedule: Prior to the adoption of the annual budget, the City Council shall receive a report from the Director of Planning reviewing the fair share conservation land acquisition fee schedule in subsection (c) and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to the population projections, property values costs, inflation and other relevant factors.

(f) Use of Funds Collected:

(1) The City shall establish an appropriate accounting mechanism for insuring that the fees collected pursuant to this section are appropriately earmarked and spent for the purchase of land or easements for conservation.

(2) Expenditure of fair share fees in fund:

a. Proceeds shall be used exclusively for the purchase of land or easements for conservation in a manner consistent with the capital improvements plan of the Comprehensive Plan.

b. Any funds on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. All income derived from these investments shall be retained in the account. These moneys shall be utilized for the purchase of land or easements for conservation in a manner consistent with the capital improvements plan in the Comprehensive Plan.

c. Each year, at the time the annual City budget is reviewed, the Director of Planning shall propose appropriations to be spent from the fund. The proceeds shall be spent for capital improvements in a manner consistent with the capital improvements plan of the Comprehensive Plan. Any amounts not appropriated from the fund, together with any interest earnings, shall be carried over to the following fiscal period.

Sec. 9.5-494. Fair Share Public Safety Facilities Impact Fee.

(a) Purpose and Authority:

(1) The City Council has determined and recognized through the adoption of the Comprehensive Plan that the growth rate the City will experience through the year 2020 will necessitate a significant capital expansion of the City's police and fire rescue facilities.

(2) In order to finance the capital expansion of these new public safety facilities to accommodate new growth, several combined methods of financing will be necessary, one (1) of which will require all land development in the City to pay a fair share public safety facilities fee which is consistent with the case of Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).

(3) Implementing such a regulatory and financing program is the responsibility of the City of Marathon pursuant to section 163.3161 et seq.; Florida Statutes, and is in the best interest of the public's health, safety and welfare.

(4) It is the purpose of this section to establish a regulatory system to assist in providing funding for the capital expansion of these new public safety facilities created by the need to accommodate the City's new growth. Pursuant to this section, new land development and redevelopment will be required to pay a fee which does not exceed a pro rata share of the reasonably anticipated costs for the capital expansion of new public safety facilities.

(5) It is not the purpose of this section to collect any money from any new development in excess of the actual amount necessary to offset the requirements for the capital expansion of new public safety facilities. It is specifically acknowledged that this section has approached the problem of determining the fair share public safety facilities fee in a conservative and reasonable manner.

(b) Fair Share Public Safety Facilities Fee To Be Imposed on New Land Development Activity:

(1) Fee: Any person who shall initiate any new land development activity generating a need for public safety facilities shall pay, prior to the issuance of a certificate of occupancy, either a fee amount based upon an individual assessment pursuant to paragraph (2) of this subsection, or, a fair share public safety facilities fee as established by resolution of the City Council.

(2) Public safety facilities impact analysis: Any land development activity may determine its fair share public safety facilities fee by providing use and economic documentation that the actual economic impact of the land development on the respective department's facilities is less than the fair share public safety facilities fee set forth above. The documentation submitted shall be prepared by qualified professionals in the field and shall show the basis upon which the fair share fee has been calculated, including but not limited to information about demand for police and fire rescue space, patrol car, jail facilities, fire stations and fire trucks.

(c) Time and Amount of Payment: No certificate of occupancy shall be issued until any applicable fair share public safety fee is paid. If, in the time between the date of the building permit application and the date of the request for a certificate of occupancy, the applicable fair share public safety fee amount is altered, the fee amount due shall be the lower of the two (2) amounts.

(d) Use of Funds Collected:

(1) The funds collected pursuant to these provisions shall be used solely for the purpose of the capital expansion of public safety facilities in the City of Marathon, including but not limited to:

a. Design and construction plan preparation;

b. Land acquisition;

c. Acquisition of new patrol cars and fire trucks;

d. Acquisition of new police boats;

e. Acquisition or construction of new police and fire stations; and;

f. Acquisition of jail facilities.

(2) Said funds shall not be used to maintain existing public safety facilities.

(e) Credits to the Fair Share Public Safety Facilities Fee:

(1) Where a person initiating land development activity has entered into an agreement with the City to dedicate land or construct a building for public safety facilities that are consistent with the Comprehensive Plan, the Director of Planning shall grant a credit against any fair share public safety facilities fee imposed by this section upon the new land development activity. A credit equal to the dollar value of the land dedicated or police or fire rescue facility in the agreement shall be provided. No credit shall exceed the fairshare public safety facilities fee imposed by this section for the proposed land development activity.

(2) The determination of the credit shall be undertaken through the submission of a proposed credit agreement to the Director of Planning, which agreement shall include the following information:

a. The proposed land or plan of police or fire building improvement prepared and certified by a duly qualified and licensed Florida engineer; and

b. The projected costs for the proposed land or building improvements.

The proposed credit agreement shall be prepared by qualified professionals in the fields of engineering, impact analysis and economics.

(3) Within twenty (20) working days of receipt of the proposed credit agreement, the Director of Planning shall determine if the proposal is complete. If it is determined that the proposed agreement is not complete, the Director of Planning shall send a written statement to the applicant outlining the deficiencies. The Director of Planning shall take no further action on the proposed credit agreement until all deficiencies have been corrected or otherwise settled.

(4) Once the Director of Planning determines the credit agreement is complete, he shall review it within twenty (20) working days, and shall approve the proposed credit agreement if it is determined that the proposed land dedication or building improvement is consistent with the capital improvements outlined in the Comprehensive Plan and the proposed costs for the land or building improvement are professionally acceptable and fairly assess the cost for the capital improvement. If the Director of Planning determines that either the suggested land dedication or building improvement is not consistent with the proposed improvements outlined in the plan or that the proposed costs are not acceptable, he shall deny the proposed credit agreement.

(5) If the proposed credit agreement is approved by the Director of Planning, a credit agreement shall be prepared and signed by the applicant and the City. It shall specifically outline the land dedication or building improvement that will be constructed by the applicant, the time by which it shall be completed, and the dollar credit the applicant shall receive for construction of the land dedication or building improvement.

(6) Any person may appeal the Director of Planning's decision on any credit agreement he submits by filing a petition with the City Council within thirty (30) days of a decision by the Director of Planning. In reviewing the Director of Planning's decision, the City Council shall use the standards established in subsection (b) of this section.

(f) Review of the Section and Fee Schedule: Prior to the adoption of the annual budget, the City Council shall receive a report from the Director of Planning reviewing the fair share public safety facilities fee schedule in subsection (b) of this section and any recommended changes in the fee schedule. Changes in the schedule should be based on any revisions to the population projections, costs, inflation and other relevant factors.

(g) Use of Funds Collected:

(1) The City shall establish an appropriate accounting mechanism for ensuring that the fees collected pursuant to this section are appropriately earmarked and spent for the capital expansion of the City's fire rescue department or the County sheriff's department to the extent of capital resources utilized to provide police services in the City of Marathon.

(2) Expenditure of fair share fees in account:

a. Proceeds from the account shall be used exclusively for the capital expansion of the City's fire rescue department or the County sheriff's department to the extent of capital resources utilized to provide police services in the City of Marathon, and in a manner consistent with the capital improvements plan of the Comprehensive Plan.

b. Any funds on deposit, not immediately necessary for expenditure, shall be invested in interest-bearing assets. These moneys shall be utilized for the capital expansion of the City's fire rescue department or the County sheriff's department to the extent of capital resources utilized to provide police services in the City of Marathon in a manner consistent with the capital improvements plan in the Comprehensive Plan.

c. Each year, at the time the annual City budget is reviewed, the Director of Planning shall propose appropriations to be spent from the funds. The proceeds shall be spent for capital improvements from which the fund moneys have come, consistent with the capital improvements plan of the Comprehensive Plan. Any amounts not appropriated from the funds, together with any interest earnings, shall be carried over to the following fiscal period.

Section 2. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of phrase of this Ordinance shall for any reason 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 3. The provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. 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 the Ordinance may be renumbered or re-lettered to accomplish to such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. 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 6. This Ordinance shall be effective immediately upon the later of approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes or the date which is ninety (90) days after the date of enactment by the City Council.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 21st day of December, 2006.

THE CITY OF MARATHON, FLORIDA

Christopher M. Bull, Mayor

AYES: Tempest, Worthington, Pinkus, Mearns, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier
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. 2006-34

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.* (2006), 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 December 28, 2006, the Department received for review City of Marathon Ordinance No. 2006-34 that was adopted by the City of Marathon Board of City Commissioners on December 21, 2006 ("Ord. 2006-34"). Ord. 2006-34 provides an impact fee ordinance specific to the City of Marathon based on the most recent and localized data with regard to demographics and expected growth patterns.

3. Ord. 2006-34 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.* (2006).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2006) and Rule 31-31.002 (superseding Chapter 27F-8), *Fla. Admin. Code.*

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2006). The regulations adopted by Ord. 2006-34 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. 2006-34 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.
> (h) To protect the value, efficiency, cost effectiveness, and amortized life of existing and proposed major public investments.

9. Ord. 2006-34 is not inconsistent with the remaining Principles. Ord. 2006-34 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2006-34 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.

CHARLES GAUTHIER, AICP
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 31-106.201(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 21st day of February, 2007.

per Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Christopher M. Bull, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Diane Clavier, 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:

Clark Turner, ACSC Administrator
Richard E. Shine, Assistant General Counsel