MINOR CONDITIONAL USE MN-13-03

RESOLUTION NO. 14-01-02

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY H&C ISLANDER RESORT, LLC FOR MINOR CONDITIONAL USE APPROVAL (MN-13-03) TO CONSTRUCT A PUMP STATION AND ACCESSORY STRUCTURES ON A PORTION OF PROPERTY LOCATED AT APPROXIMATELY MM 81.2 OLD HIGHWAY WITH REAL ESTATE NUMBER 00400810-000000 ON UPPER MATECUMBE KEY, AS LEGALLY DESCRIBED IN EXHIBIT “A;” WITHIN THE TOURIST COMMERCIAL (TC) ZONING DISTRICT; PROVIDING FOR THE TRANSMITTAL OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, H&C Islander Resort, LLC (the “Owner”) is the owner of property located at approximately MM 81.2 Old Highway with Real Estate Number 00400810-000000 Upper Matecumbe Key, and as legally described in Exhibit “A” (the “Property”) within Islamorada, Village of Islands, Florida (the “Village”); and

WHEREAS, the Owner has applied to the Village for Minor Conditional Use approval for the development of a pump station and accessory structures on the Property; and

WHEREAS, the Village intends to purchase the Property for the development of a pump station and accessory structures thereupon; and

WHEREAS, pursuant to Section 30-693(c)(7) of the Code of Ordinances (the “Code”) of Islamorada, Village of Islands, Florida (the “Village”), any infrastructure and municipal utility facilities within the Tourist Commercial (TC) Zoning District shall be reviewed as a Minor Conditional Use; and
WHEREAS, pursuant to Code Chapter 30, Article IV, Division 2, the Applicant has applied for Minor Conditional Use Approval (MN-13-04) for the development of a pump station and accessory structures (the “Request”); and

WHEREAS, the Village Development Review Committee (the “DRC”) reviewed the Request during a meeting held on November 19, 2013 and recommended approval of the Request with conditions to the Director; and

WHEREAS, the Director issued a Notice of Public Hearing for Minor Conditional Use MN-13-03 on December 23, 2013; and

WHEREAS, pursuant to the applicable provisions of the Code, the Director in his Council Communication dated January 9, 2014 recommended to the Village Council that the Request be approved with conditions; and

WHEREAS, the Village Council has considered the Request, the relevant support materials, the DRC’s and the Director's recommendations, public testimony and evidence given at a properly advertised public hearing held on January 9, 2014 (the “Hearing”).

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

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

Section 2. Findings of Fact. The Village Council, having considered the Request, the relevant support materials, the DRC’s and Director's recommendations, and public testimony given at the Hearing, does hereby find and determine:

1. The Applicant submitted the Request on July 12, 2013.
2. The Request consists of a Site Plan attached as Exhibit “B” depicting the Request’s configuration, layout and level of impacts.

3. The Property is located within the Mixed Use (MU) Future Land Use Map (FLUM) category.

4. The Property is located within the Tourist Commercial (TC) Zoning District.

5. The Request complies with the standards of Code Section 30-217(d) for considering conditional uses.

6. The Request complies with the Concurrency Management and other applicable requirements of Code Chapter 30, Land Development Regulations (the “LDRs”).

7. The Request is consistent with the purposes, goals, objectives and policies of the Village Comprehensive Plan, including standards for building and structural intensities and densities, and intensities of use.

Section 3. Conclusions of Law. Based upon the above Findings of Fact, the Village Council does hereby make the following Conclusions of Law:

1. The Request has been processed in accordance with the applicable provisions of the LDRs, and will not be detrimental to the community as a whole.

2. In rendering its decision as reflected in this Resolution, the Village Council has:

   (a) Accorded procedural due process;

   (b) Observed the essential requirements of the law; and

   (c) Supported its decision by competent substantial evidence of record.

3. The Request is hereby APPROVED, subject to the conditions imposed below.

Section 4. Conditions Imposed. Granting of the Request is subject to the following conditions:
1. The Landscape Plan as shown on Sheets L-3 and L-3.1 shall be modified and approved by the Village Biologist/Environmental Planner to incorporate the transplantation and mitigation plan for all vegetation removed during development and to include the following information:

   a. Required bufferyards as shown on Sheet C-4 with the quantities modified and illustrated as follows:

      i. The Class B bufferyard along Old Highway shall contain a minimum of three (3) canopy trees, one (1) understory tree and eight (8) shrubs; and

      ii. The Class D bufferyard adjacent to Lot 9 shall contain ten (10) canopy trees, five (5) understory trees and forty-two (42) shrubs.

   b. The mitigation/restoration requirements shall be as follows:

      | Species and size (dbh) | Replacement Requirements |
      |------------------------|--------------------------|
      | Green buttonwood: 9”, 6”, 7”, 8”, 8” | 11                      |
      | Sea grape: 13”, 20.5”, 9.7”, 6.8”, 8” | 13                      |
      | Mahogany: 7.1”, 7.3”, 4.4”, 7.6”, 7.7”, 5.7” | 10                      |
      | Fig: 12.3”              | 2                       |
      | Florida Thatch Palm: 28 palms: range from 4’ O. A. Ht. to 15’ C.T. | 28*                     |

   c. The species shall be consistent with detailed plant material list as specified in the Memorandum dated December 5, 2013(Exhibit “C”).

2. The stormwater management shall be approved or exempted by the South Florida Water Management District (SFWMD) prior to building permit issuance.

3. A final stormwater management plan shall be submitted to the Director and approved by the Village Stormwater Engineer prior to the issuance of any building permit.

4. Pursuant to Section 166.033, Florida Statutes, all applicable state and federal permits must be obtained before commencement of the development. Issuance of a development permit by a municipality does not in any way create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the
municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a federal or state agency or undertakes actions that result in a violation of state or federal law.

**Section 5. Conflicting Provisions.** In the event the conditions or time limitations contained herein, and any conditions or time limitations of any subsequent development approval granted by the Village, or the LDRs are in conflict, the more restrictive shall apply.

**Section 6. Violation of Conditions.** The Owners/Applicant understand and acknowledge that he or she must comply with all of the terms and conditions herein, and all other applicable requirements of the Village or other governmental agencies before he or she may commence construction or operation of any use authorized herein. In accordance with Code Section 30-224, this approval may be revoked by the Village Council upon a determination that the Owner/Applicant or its successor or designee is in non-compliance with this Resolution or the Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed by the Code.

**Section 7. Effective Date.** This Resolution shall not take effect until after thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code.

**Section 8. Term.** This Development Order shall become null and void, with no further notice required by the Village, unless a complete building permit application for site preparation and building construction is submitted to the Village Building Official within the time frame specified in the LDRs. Commencement of development shall occur within three (3) years of the date of this Development Order unless a time extension is granted by the Director or the Village Council.
pursuant to Code Section 30-225. If the Development Order is appealed under the LDRs or by the DEO, the above time limits shall be tolled until the appeals are resolved.

The foregoing Resolution was offered by Vice Mayor Deb Gillis, who moved for its adoption. This motion was seconded by Councilman Ken Philipson, and upon being put to a vote, the vote was as follows:

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Ted Blackburn       Yes
Vice Mayor Deb Gillis     Yes
Councilman Mike Forster   Yes
Councilman Ken Philipson  Yes
Councilman Dave Purdo     Yes


DEB GILLIS, VICE MAYOR

ATTEST:

SYNTHIA LANKFORD, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY

ROGET V. BRYAN, VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk on this 10th day of Jan, 2014.

Synthia Lankford, Village Clerk
CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished to the Owner, via U.S. certified mail, return receipt requested, addressed to H&C Islander Resort, PO Box 126, Fort Smith, AR 72902, as agent for the Owner, this 14th day of July, 2014.

[Signature]
Synthia Lankford, Village Clerk