

After recording, please return to:  
Planning and Development Services Department  
Islamorada, Village of Islands  
86800 Overseas Highway  
Islamorada, Florida 33036

Filed and Recorded in Official Records of  
**MONROE COUNTY KEVIN MADOK, CPA**

## **RESOLUTION NO. 22-10-116**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING ADMINISTRATIVE APPEAL NO. PLADA20220127 FILED BY NATIVE CONSTRUCTING CONTRACTING, INC. & ISLAMORADA REALTY INVESTMENT TRUST RELATING TO AN ADMINISTRATIVE DECISION AND INTERPRETATION BY THE DIRECTOR OF PLANNING (DENIAL OF A TRANSFERABLE DEVELOPMENT RIGHT) FOR PROPERTY FORMERLY LOCATED AT 74960 OVERSEAS HIGHWAY (CURRENT REAL ESTATE NUMBERS 00394481-002200 AND 00394481-002100) AND 77481 OVERSEAS HIGHWAY (REAL ESTATE NUMBER 00397120-00000), ON LOWER MATECUMBE KEY, ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS LEGALLY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Native Construction Contracting, Inc. and Islamorada Realty Investment Trust 03/24/2017 (collectively "Applicant") applied for Minor Conditional Use Permit for the Transfer of Development Right ("TDR") ("Application") pursuant to Section 30-503 of the Code of Ordinances Islamorada, Village of Islands, Florida on September 24, 2021, to transfer one (1) TDR from the real property located at 74960 Overseas Highway, Islamorada, Florida, having Monroe County Parcel ID 00394481-002000 ("Sender Site") to the real property located at 77481 Overseas Highway, Lower Matecumbe, Florida, having Monroe County Parcel ID 00397120-000000 (the "Receiver Site"); and

**WHEREAS**, on October 14, 2021, the Assistant Director of Planning issued a Notice of Intent to Issue Approval of a Transfer of Development Rights; and

**WHEREAS**, on October 24, 2021, the Assistant Director of Planning rescinded the Notice of Intent to Issue Transfer of Development Rights Approval based on the habitat analysis of the Receiver Site; and

**WHEREAS**, on October 5, 2022, the Planning and Development Services Director denied the application for Transfer of Development Rights from the Sender Site to the Receiver Site; and

**WHEREAS**, on October 6, 2022, Barton W. Smith ("Agent") submitted an Administrative Appeal on behalf of the Applicant, appealing the Planning and Development Services Director's decision to deny the application for Transfer of Development Rights; and

**WHEREAS**, the Village Council conducted a duly noticed Public Hearing regarding the Request to Appeal the decision of the Planning and Development Services Director's decision to deny the application for Transfer of Development Rights on October 25, 2022; and

**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 and correct and incorporated into this Resolution by this reference.

**Section 2.** **Findings of Fact.**

The Village Council, having considered the testimony and evidence presented by all parties, including Village Staff, does hereby find and determine:

(1) The Application for a Transfer of Development Rights meets the requirements set forth in the Village Code, Chapter 30, Article IV, Division 12 – Transfer of Development Rights and has demonstrated through competent substantial evidence that the criteria for granting the Request have been met.; and

(2) The applicant has met the standards for an Administrative Appeal of the denial of the proposed Transfer of Development Rights contained within Sec. 30-281 (Administrative Appeals) of the Village Code.; and

(3) The Village Council approves the Request submitted by the Agent on behalf of the Applicant subject to compliance with the following conditions:

1. A minimum setback of 50' from the landward toe of the restored beach berm is required for all non-water dependent structures.

2. Applicant/owner agrees to file a Grant of Conservation Easement Agreement (GOCEA) to protect identified environmental resources on the subject property. The GOCEA shall at minimum cover the area of the restored beach berm from the Mean High Water line (MHW) to 40 feet landward of the MHW line for the entire width of the property. The area of GOCEA shall be a minimum of 4,000 square feet in size. The GOCEA shall be completed pursuant to the satisfaction of the Village Attorney. The GOCEA shall be recorded as a declaration of covenants and restrictions to run with the land in perpetuity.

3. Applicant/owner agrees to submit a plan for the development of the property which limits development to that portion of the property not containing existing or proposed environmental resources. The plans for the proposed single-family residence shall be submitted for review and approval to the Department of Planning and Development Services prior to the issuance of any permits.

4. Applicant/owner agrees to restore the disturbed beach berm area meeting, at minimum, the below criteria:

- a. Obtain and landscaping permit from the Village prior to restoration activities.
- b. All restoration shall be completed prior to the issuance of a Certificate of Occupancy for the principal structure.
- c. Only approved sand to be used on sea turtle nesting beaches shall be used. A screening report and sample shall be submitted to and approved by the Village Biologist prior to placement on the property.
- d. The waterward side of the berm shall begin at the MHW line.
- e. The minimum size of the berm shall be: five (5) feet in height above existing grade with a 5:1 slope on both the waterward and landward slopes; 40 feet in depth as measured from waterward to landward; extend the entire width of the property (approximately 100 feet).
- f. The construction of the berm shall be approved by the Village Biologist via site inspection prior to any planting activities.
- g. The berm shall be planted with a minimum of:
  - i. Eight (8) canopy trees, spaced evenly, consisting of two (2) Sea grape trees and six (6) green buttonwood trees. Canopy trees shall be a minimum of eight (8) feet in height at the time of installation.
  - ii. 14 understory trees, spaced evenly, staggered from the canopy trees. A minimum of five (5) different species shall be planted with no more than three (3) of any one species. The species shall be selected from the approved list (attached). Understory trees shall be a minimum of six (6) feet in height at the time of installation.
  - iii. 20 shrubs, spaced evenly, staggered from the canopy and understory trees. A minimum of three (3) different species shall be planted with no more than 10 of any one

species. The species shall be from the approved list (attached). Shrubs shall be a minimum of three (3) feet in height at the time of installation.

iv. 40 ground cover plants, spaced evenly, staggered from all trees and shrubs. A minimum of four (4) different species shall be planted with no more than 10 of any one species. Ground covers shall be a minimum of one gallon in size at the time of installation.

h. All plantings shall be guyed or staked at the time of installation. All support materials shall be removed once the plantings are established.

i. All plantings shall meet 100% survivorship for a period of two (2) years. Any dead material shall be replaced during the two-year period. The two-year period shall begin once all planting is completed and inspected by the Village Biologist.

j. The entire subject property shall remain invasive exotic free for the two-year survivorship period.

k. Applicant/owner shall have a maximum of 30 days to remove and/or treat invasive exotic vegetation once identified and notified by the Village. Failure of the Applicant/owner to act within the 30-day period shall be considered a violation of the conditions of approval and is subject to Code Compliance action.

l. The Village maintains the right to access and inspect the property from the time of the restoration (landscape) permit issuance through the end of the two-year survivorship period.

**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 Village Comprehensive Plan and the Code; and

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

- (a) Accorded procedural due process; and
- (b) Observed the essential requirements of the law; and
- (c) Supported its decision by competent substantial evidence contained within the record.

**Section 4. Effective Date.**

This Resolution shall not take effect until after both 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; and following the thirty (30) days, this resolution shall not be effective or acted upon by the Applicant until forty-five (45) days following the rendition to the Department of Economic Opportunity (DEO), pursuant to Chapter 9J-1 of the Florida Administrative Code. During those forty-five (45) days, the DEO may appeal this resolution to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this Resolution until the appeal is resolved by agreement or order.

Motion to adopt by Vice Mayor Henry Rosenthal, second by Mayor Pete Bacheler.

**FINAL VOTE AT ADOPTION**

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS:

Mayor Peter Bacheler	<u>Yes</u>
Vice Mayor Henry Rosenthal	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilman Joseph B. Pinder III	<u>Yes</u>
Councilman David Webb	<u>Yes</u>

**PASSED AND ADOPTED** this 25<sup>th</sup> day of October 2022.

  
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PETER BACHELER, MAYOR

ATTEST:

  
\_\_\_\_\_  
MARNE MCGRATH, VILLAGE CLERK

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

  
\_\_\_\_\_  
JOHN QUICK, INTERIM VILLAGE ATTORNEY