

IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

KEY MARCO COMMUNITY
ASSOCIATION, INC.

Appellant,

v.

CASE NO. 09-5098 CA
CEB Case No. 09-591

THE CITY COUNCIL OF
MARCO ISLAND CODE
ENFORCEMENT BOARD

Appellee.

consolidated with

GREENSWARD OF MARCO ISLAND

Appellant,

v.

CASE NO. 09-5099 CA
CEB Case No. 09-624

THE CITY COUNCIL OF
MARCO ISLAND CODE
ENFORCEMENT BOARD

Appellee.

**SUPPLEMENTAL APPENDIX TO APPELLEE
CITY OF MARCO ISLAND'S ANSWER BRIEF**

WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.
Counsel for the City of Marco Island
2525 Ponce de Leon Blvd., Suite 700
Miami, FL 33134
Telephone: (305) 854-0800
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SUPPLEMENTAL APPENDIX


- Tab A: Case Summary: R.000224 and R.000346
- Tab B: Affidavits of Violation: R.000226 and R.000348
- Tab C: Request for Continuance of CEB Hearing.
- Tab D: City Code, Chapter 14, Article II. Code Enforcement Board
- Tab E: City Code, Chapter 31, Article XIV. Vegetation Removal and Protection

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via courtesy electronic mail and U.S. mail on this 3rd day of February, 2010 to: Brian O. Cross, Esq. and Casey Weidenmiller, Esq., Salvatori, Wood, Buckel & Weindenmiller, P.L., *Attorneys for Appellants*, 9132 Strada Place, 4th Floor, Naples, FL 34108; and Ralf Brookes, Esq., *Attorney for Amicus, Conservancy of Southwest Florida*, 1217 East Cape Coral Parkway, Suite 107, Cape Coral, FL 33904.

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.

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By: 
Laura K. Wendell
Florida Bar No. 53007
Daniel A. Abbott
Florida Bar No. 767115

A

**CITY OF MARCO ISLAND
CODE ENFORCEMENT BOARD
CASE #09-591**

CASE SUMMARY

This case involves a repeat violation for the removal of vegetation without a permit at two locations Tract Z and Tract V, both are Native Habitat Parks. A Report to the Florida Fish and Wildlife Conservation Commission was funded by the Key Marco Community Association in 2006. This report includes a survey of both Tract V and Tract Z and provides a list of plant species identified in the Tracts. The list is significant and is attached as an exhibit.

Tract Z (aka the Indian Mound)

This is an area of Key Marco which is a Native Habitat Park and the location of what may be part of the oldest Indian Settlement in North America. On August 5, 2008 it was observed native vegetation had been removed from Tract Z in violation of the code and the conditions of an existing permit issued to trim vegetation. Permit #08-051 was issued on June 17, 2008 and was valid for a period of one year based on a management plan created by the Key Marco Community Association. The permit was only for trimming no removal of vegetation was permitted. Subsequent meetings took place with Code Compliance, the Community Development Director and the City Manager. A letter was sent by the City Manager to the Key Marco Community Association which identified they were in violation of City Code 30-932 and required mitigation. The mitigation was successfully completed on another site. In a meeting between Nancy Richie, Eric Wardle and Eileen Ward in December of 2008 it was observed that excessive trimming had continued on Tract Z in violation of the permit. Eileen Ward pointed out an area where there was minor re-growth of a native plant which had been removed. That re-growth has subsequently been removed. Some of the native vegetation on Tract Z has been documented on a map and is attached as an exhibit. The result of the continued and excessive removal of vegetation on Tract Z and resulted in irreversible and irreparable damage to the Native Habitat Park and identified in the photographic exhibits.

Tract V

On March 6, 2007 the Respondent was issued a Notice of Violation (case #07-845) for removal of vegetation from Tracts F, G & V without a permit. The case was scheduled for a hearing before the Code Enforcement Board and the violation was reported to be irreparable and irreversible in nature. The case was settled through an agreement with the City prior to being heard by the Code Enforcement Board. The settlement agreement included a stipulation that any future violation would be considered a repeat violation. On December 2 and 18, 2008 trimming in Tract V was observed by Nancy Richie and Eric Wardle. As a result the Respondents were required to obtain an after the fact permit. The after the fact permit application was submitted by Eileen Ward of Greensward on January 7, 2009. The permit application request was "to clear property line of vines, weeds and smoker tree growth to a width of 6 ft." The permit was approved on January 7, 2009 with the Condition of Conservancy approval and that Gopher Tortoise burrows be marked. In March of 2009 it was observed the Respondents cleared vegetation including native vegetation from Tract V for a width of between 25 and 55 feet and Gopher Tortoise burrows were not marked. The result of the clearing is irreparable and irreversible damage to the Tract V Native Habitat Park and identified in the attached photographic evidence.

EXHIBIT # 1

**CITY OF MARCO ISLAND
CODE ENFORCEMENT BOARD
CASE #09-624**

CASE SUMMARY

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EXHIBIT # 1

B

CITY OF MARCO ISLAND
CODE ENFORCEMENT BOARD

THE CITY COUNCIL OF MARCO ISLAND,
COLLIER COUNTY, FLORIDA

Petitioner
Vs.

CEB CASE # 09-591

Key Marco Community Association, Inc.
1271 Blue Hill Creek Drive
Marco Island, FL 34145-1704

Respondent

AFFIDAVIT OF VIOLATIONS

STATE OF FLORIDA)
COUNTY OF COLLIER) ss.

The undersigned Code Compliance Official, upon his/her oath, deposes and says:

1. THAT the Respondent, Key Marco Community Association, Inc., was sent by certified and regular mail, a Notice of Violation on March 23, 2009.
2. THAT the Respondent is the owner of record for the property known as Horr's Island aka Key Marco Tract V (Native Habitat Park) and Horr's Island aka Key Marco Tract Z (Native Habitat Park) 2323 San Marco Road, Marco Island, Florida.

Violation # 1, Removal of vegetation without a permit at Tract Z (aka Indian Mound), a Native Habitat Park, without a permit.

Violation #2, Removal of vegetation without a permit at Tract V, a Native Habitat Park, without a permit.

Facts and circumstances of this violation of code: The Respondent had been issued a permit to trim at Tract Z, however removed vegetation beyond the scope of the permit and continued to remove vegetation beyond the scope of the permit after being informed of the violation. The Respondent had been issued a permit to trim vegetation and remove exotic vegetation on Tract V. Native vegetation was removed in violation of the conditions of the permit. Additionally, the permit allowed the Respondent to trim to a depth of six (6) feet into the Tract. The Respondent's workers were observed removing vegetation after the permit expired and to a depth which significantly exceeded the six (6) foot permitted area. (See summary for additional details)

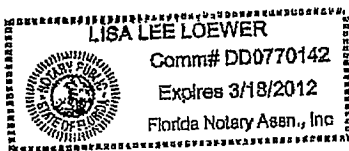
STATE OF FLORIDA
CITY OF MARCO ISLAND

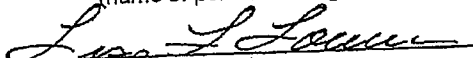
On this day personally appeared before me, the undersigned authority, who acknowledged that he is a duly authorized City of Marco Island Code Compliance Official and acknowledged the execution of the foregoing Affidavit of Violation.


CODE ENFORCEMENT OFFICER

STATE OF FLORIDA
COUNTY OF COLLIER

Sworn to (or affirmed) and subscribed before me this 25th day of
March, 2009, by Eric Wardle
(name of person making statement)




Signature of Notary Public
Lisa L. Loewer
Print name

CITY OF MARCO ISLAND
CODE ENFORCEMENT BOARD

THE CITY COUNCIL OF MARCO ISLAND,
COLLIER COUNTY, FLORIDA

Petitioner
Vs.

CEB CASE # 09-624

Greensward of Marco, Inc.
PO Box 764
Marco Island, FL 34146

Respondent

AFFIDAVIT OF VIOLATIONS

STATE OF FLORIDA)
COUNTY OF COLLIER) ss.

The undersigned Code Compliance Official, upon his/her oath, deposes and says:

1. THAT the Respondent, Greensward of Marco, Inc., was sent by certified and regular mail, a Notice of Violation on March 23, 2009.
2. THAT the Respondent is the contractor responsible for the removal of vegetation at the property know as Horr's Island aka Key Marco Tract V (Native Habitat Park) and Horr's Island aka Key Marco Tract Z (Native Habitat Park) 2323 San Marco Road, Marco Island, Florida.

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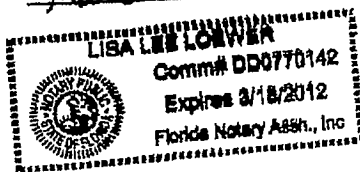
STATE OF FLORIDA
CITY OF MARCO ISLAND

On this day personally appeared before me, the undersigned authority, who acknowledged that he is a duly authorized City of Marco Island Code Compliance Official and acknowledged the execution of the foregoing Affidavit of Violation.

[Handwritten Signature]
CODE ENFORCEMENT OFFICER

STATE OF FLORIDA
COUNTY OF COLLIER

Sworn to (or affirmed) and subscribed before me this 25 day of March, 2009, by Eric Waddie
(name of person making statement)



[Handwritten Signature]
Signature of Notary Public
Lisa Lee Lower
Print name

C

Salvatori, Wood, Buckel & Weidenmiller

ATTORNEYS AT LAW

9132 Strada Place, Fourth Floor, Naples, FL 34108-2683

Tel: 239.552.4100
Fax: 239.649.1706
Web: www.swbw-law.com

April 1, 2009

VIA REGULAR U.S. MAIL AND EMAIL (ewardle@cityofmarcoisland.com)

Eric L. Wardle, Jr.
City of Marco Island
50 Bald Eagle Drive
Marco Island FL 34145

**RE: Key Marco Community Association, Inc.
Our File No. 11251-00001**

Dear Mr. Wardle:

As you may know, Salvatori, Wood, Buckel & Weidenmiller, P.L. represents the Key Marco Community Association, Inc.

I am in receipt of the notice of alleged violations bearing Code Enforcement Case numbers 09-591 and 09-624. The hearing on these matters is currently scheduled for April 14, 2009 at 3:00 p.m.; however, I understand that inasmuch as I will be out of the country immediately prior to that date and unable to properly prepare for this hearing, you will grant my request for a continuance. I would appreciate your confirming that this is the case.

I also understand that as a condition to granting this request, my client must agree to discontinue trimming of any kind on Tracts V and Z until the hearing. We are agreeable to this condition.

Finally, as we anticipate that the hearing on these matters may take two to three hours, we respectfully request that sufficient time be allotted when the hearing is rescheduled.

Your attention to this matter is appreciated.

Sincerely,

**SALVATORI, WOOD,
BUCKEL & WEIDENMILLER**


Casey K. Weidenmiller

CKW/vaf

cc: Mr. W. Neil Dorrill, via email
Mr. Gerry Tsandoulas, via email
Mr. Steven Olmsted, via email

D

ARTICLE II. CODE ENFORCEMENT BOARD*

***Cross references:** Boards and commissions, § 2-201 et seq.

State law references: Local government code enforcement boards, F.S. § 162.01 et seq.

Sec. 14-31. Title of article.

This article shall be known and may be cited as the "City of Marco Island Code Enforcement Board Ordinance."

(Ord. No. 98-4, § 2, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City attorney means the legal counsel to the council.

Clerk to the code enforcement board means the clerk to the city council, or the designee of such person, who shall be responsible for minutes and other records of a code enforcement board and such other matters as provided for in this article.

Code enforcement official means any authorized agent or employee of the city whose duty it is to ensure code and ordinance compliance, and who is responsible for the enforcement or implementation of codes and ordinances of the city.

Enforcement board means the city code enforcement board.

Hold-over term means the continuation of an expired term of a code enforcement board member who, prior to the expiration date of such member's term, presided over the presentation of a case hearing that had not reached conclusion with a final vote by the time of the expiration date of such term. Such continuation of a member's expired term shall be extended for the limited time and for the limited purpose of presiding over such particular case until conclusion and final vote and the time for rehearing has passed. If a rehearing is granted, such member's term shall continue for the limited time and limited purpose to rehear the matter and reach a conclusion by final vote.

Person means an individual, association, firm, partnership, corporation, or other legal entity recognized under the laws of the state.

Prosecutor means the city attorney and/or any member of the city staff who presents cases before an enforcement board, as applicable.

Violator means a person alleged to, or who has been found to, have violated any ordinance or code of the city which a code enforcement board has jurisdiction to enforce.

(Ord. No. 98-4, § 4, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Cross references: Definitions generally, § 1-2.

Sec. 14-33. Findings; purpose of article.

The city council does hereby make the following findings:

(1) It is the intent and purpose of this article to promote, protect and improve the health, safety and welfare of the citizens of the city by authorizing the creation of a code enforcement board, with authority to impose administrative fines and other noncriminal penalties.

(2) The purpose and function of such code enforcement board is to provide an equitable, expeditious, effective and inexpensive method of enforcing the codes and ordinances of the city, with the exception of traffic violations, where a pending or repeated violation continues to exist, including but not limited to housing regulations, occupational license regulations, fire regulations, development standards, building regulations, zoning regulations, and sign codes.

(3) It is in the best interest of the citizens of the city to create such a code enforcement board as a supplemental and additional means of enforcement.

(Ord. No. 98-4, § 1, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-34. Applicability of article.

This article shall apply to and be enforced within the territorial limits of the city.

(Ord. No. 98-4, § 3, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-35. Membership; compensation of members; appointment and term of members; vacancies.

(a) The council may appoint one seven-member code enforcement board. All members of the code enforcement board shall be permanent residents and electors of the city and shall serve without compensation. Members may be reimbursed for such travel, mileage, and per diem expenses as may be authorized, in advance, by the council.

(b) Term of office. The members of the code enforcement board shall be appointed for a term of three years on a staggered basis.

(c) The appointment of members to the enforcement board shall be made on the basis of experience or interest in the fields of zoning and building control, or other areas as are relevant to the codes or ordinances of the city, which are to be enforced. The membership of the enforcement board shall, whenever possible, include, but not be limited to, an architect, a businessperson, an engineer, a general contractor, a subcontractor and a realtor.

(d) If any member's term expires during the pendency of any case which has not reached conclusion by a final vote, such member's expired term shall be extended for the limited time and for the limited purpose of presiding over such particular case until conclusion and final vote and the time for rehearing has passed. If a rehearing is granted, such member's terms shall continue for the limited time and limited purpose to rehear the matter and reach a conclusion by final vote.

(e) An appointment to fill any vacancy on the code enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the code enforcement board

shall declare the member's office vacant, and the city council shall promptly fill such vacancy.

(f) The members shall serve in accordance with ordinances of the city council and may be suspended and removed for cause as provided in such ordinances for removal of members of boards.

(Ord. No. 98-4, § 5, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002; Ord. No. 04-03, § 1, 3-1-2004)

Sec. 14-36. Rules of procedure; staff support; reports.

(a) *Rules of procedure.* The enforcement board may adopt such rules and regulations as it may deem necessary to carry out the duties of the enforcement board in accordance with the provisions and intent of this article.

(b) *Staff support.* The council shall provide such clerical and administrative personnel and legal services as may be reasonably required by the board for the proper performance of its duties.

(c) *Counsel.* The city attorney, or his designee, shall either be counsel for the enforcement board or shall represent the city by presenting cases before the enforcement board, but in no case shall the city attorney or a member of his staff serve in both capacities for the same case or at the same time.

(Ord. No. 98-4, § 6, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-37. Enforcement procedure.

(a) *Initiation of proceedings.* It shall be the duty of the code enforcement official to initiate enforcement proceedings. No member of the enforcement board shall have the power to initiate enforcement proceedings.

(b) *Notice of violation.* Except as provided in subsection (e) of this section, if a violation of a code or ordinance is found to exist, the code enforcement official shall first notify the violator and shall give the violator a reasonable time to correct the violation. Notice shall be given in writing pursuant to section 14-44, and shall specify the alleged violation, the required corrective action and the time period for correction.

(c) *Affidavit of violation; notice of hearing.* Should the violation continue beyond the time specified for correction, the code enforcement official shall execute a written affidavit of violation which shall include a statement of the facts and circumstances of the alleged violation and shall identify the code or ordinance which has been violated. Upon notification and request by the code enforcement official, the enforcement board, through its clerical staff, shall schedule a public hearing. Written notice of the scheduled hearing, which shall contain the date, time and place of the hearing, and a copy of the affidavit of violation shall be provided to the violator pursuant to the provisions of section 14-44. Failure to provide proper notice may be grounds for continuing the hearing but shall not be grounds for dismissal of the charges.

(d) *Hearing before board.* If the violation is corrected and thereafter recurs, or if the violation is not corrected by the time specified for correction, the case shall be presented to the enforcement board even if the violation has been corrected prior to the board meeting, and, if practicable, the notice shall so state.

(e) *Emergency measures.* If the code enforcement official has reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code enforcement official shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing. Under such circumstances the code enforcement official shall not be required to

adhere to the notice requirements set forth in section 14-44.

(Ord. No. 98-4, § 7, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-38. Conduct of hearings.

(a) Upon the request of the code enforcement official, or at such other time as may be necessary, the chairman of the enforcement board may call hearings of the enforcement board. At any hearing, the enforcement board may set a future hearing date. The enforcement board shall attempt to convene no less frequently than once every three months, but it may meet more or less often as the demand necessitates. Minutes shall be kept of all hearings of the enforcement board, and all hearings and proceedings shall be open to the public.

(b) Each case before the enforcement board shall be presented by the city attorney or, alternatively, by a member of the city staff.

(c) Assuming proper notice of the hearing has been provided to the alleged violator as provided in section 14-44, a hearing may proceed in the absence of the alleged violator.

(d) The enforcement board shall proceed to hear the cases on the agenda for that day. All testimonies shall be under oath and shall be recorded. The enforcement board shall take testimony from the code enforcement official and alleged violator, and from such other witnesses as may be called by the respective parties. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(e) Irrelevant, immaterial or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the state.

(f) Any member of the enforcement board, or any attorney appointed to represent the board, may inquire of any witness before the board. The alleged violator, or his attorney, the attorney representing the city and the prosecutor shall be permitted to inquire of any witness before the board.

(g) At the conclusion of the hearing, the enforcement board shall issue findings of fact based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted in this article and by state statutes. The order shall be stated orally at the hearing and shall be reduced to writing and mailed to the violator within ten days after the hearing. The findings shall be by motion approved by a majority of those members present and voting, except that at least four members of the board must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed if the order is not complied with by such date.

(h) Should the enforcement board be unable to issue a decision immediately following any hearing because of questions of law or other matters of such nature that a decision cannot be immediately made, the board may withhold issuing its decision until a subsequent meeting. In such case, further discussion of the pending matter and all deliberations relating thereto by members of the enforcement board shall occur at a public meeting of the board. The board shall thereafter issue its decision pursuant to subsection (g) of this section.

(Ord. No. 98-4, § 8, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-39. Powers.

The code enforcement board shall have the power to:

- (1) Adopt rules and regulations for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to appear at its hearings, which subpoenas may be served by the county sheriff or any person permitted to serve subpoenas under state law.
- (3) Subpoena evidence, including but not limited to records, surveys, plats, and other documentary evidence, which subpoenas may be served by the county sheriff or any person permitted to serve subpoenas under state law.
- (4) Take testimony under oath.
- (5) Hold hearings.
- (6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.
- (7) Order the payment of fines as provided for in this article.

(Ord. No. 98-4, § 9, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-40. Subpoenas.

(a) Every subpoena for testimony before the enforcement board shall be issued by the clerk of the circuit court, or by any person permitted to issue a subpoena under state law, as ex-officio clerk to the board, under the seal of the city. Each subpoena shall state the name of the enforcement board, the title of the action, the case number of the action, the name and address of the person to whom the subpoena is issued, and the time, place and location of the hearing at which the person is directed to appear, and shall be prepared by the party requesting issuance.

(b) A subpoena for production of documentary evidence may also be issued to command the person to whom it is directed to produce the books, papers, documents or tangible items designated therein. The enforcement board, upon motion to quash made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible items.

(c) A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party to the action and who is not less than 18 years of age. Proof of such service shall be made by affidavit of the person making service if not served by an officer authorized by law to do so. Proof of service shall be filed with the clerk to the enforcement board. Payment of any service fee shall be made by the party at whose request the service is made.

(d) Persons subpoenaed, with the exception of the alleged violator, shall be entitled to a witness fee and mileage compensation as provided for in F.S. § 92.142. The cost of the witness fee and mileage compensation shall be borne by the party at whose request the subpoena is issued and shall be paid to the witness at or before the time of service.

(Ord. No. 98-4, § 10, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-41. Imposition of penalties.

(a) *Maximum fine.* The enforcement board, upon notification by the code enforcement official, that a previous order of the board for a first violation has not been complied with by the specified time, may order the violator to pay a fine which shall not exceed \$250.00 per day for each day the first violation continues past the date set for compliance, or, in the case of a repeat violator, may order the repeat violator to pay a fine which shall not exceed \$500.00 per day for each day the repeat violation continues, and a hearing shall not be necessary for the issuance of the order. If the enforcement board finds a violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

(b) *Determination of fine.* In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

- (1) The gravity of the violation;
- (2) Any actions taken by the violator to correct the violation; and
- (3) Any previous violations committed by the violator.

(c) *Recording of order; lien.*

(1) A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation occurred or exists and upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After six months from the filing of any such lien which remains unpaid, the enforcement board may authorize the city attorney to foreclose on the lien. No lien created pursuant to this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution.

(2) No lien provided for under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 98-4, § 11, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-42. Rehearing of board action.

(a) *Request for rehearing.* Either the prosecutor or the violator may request a rehearing of the decision of the enforcement board. A request for rehearing shall be made in writing and shall be filed with the city manager, c/o clerk to the enforcement board, within ten days of the date of receipt of the board's written order, but in any event not more than 20 days from the date of mailing of the written order. A request for rehearing shall be based only on the ground that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law which was fundamental to the decision of the enforcement board. The written request for rehearing shall specify the precise reasons therefor.

(b) *Granting of rehearing.* The enforcement board shall make a determination as to whether or not to rehear the matter and its decision shall be made at a public meeting, reduced to writing and mailed to the interested parties within ten days after the decision is made. If the enforcement board determines it will grant a rehearing, it may:

- (1) Schedule a hearing where the parties will be given the opportunity of presenting evidence or argument limited by the enforcement board to the specific reasons for which the rehearing was granted; or

(2) Modify or reverse its prior order, without receiving further evidence, providing that the change is based on a finding that the prior decision of the enforcement board resulted from a ruling on a question of law which the enforcement board has been informed was an erroneous ruling.

(c) *Stay of original order.* The original order of the enforcement board shall be stayed, and the time for taking an appeal pursuant to section 14-43 shall not commence to run until a request for rehearing has been denied or otherwise disposed of and the written decision has been received by the interested parties; provided, however, that in no event shall the order be stayed for a period longer than 20 days from the date of mailing of the rehearing decision.

(Ord. No. 98-4, § 12, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-43. Appeals.

(a) Any aggrieved party, including the council, may appeal a final administrative order of the enforcement board to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the enforcement board. Any appeal shall be filed within 30 days of the execution of the order to be appealed.

(b) If a party to the proceedings before the enforcement board should elect to appeal, a verbatim record of the proceedings may be required or may be desirable. It shall be the sole responsibility of each party to the proceedings to ensure that a record is made which includes the testimony upon which an appeal may be taken. Neither the city nor the enforcement board shall have any responsibility to provide a verbatim transcript of the proceedings.

(Ord. No. 98-4, § 13, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-44. Service of notices.

(a) All notices required by this article shall be provided by certified mail, return receipt requested, or by hand delivery by the director, sheriff or other law enforcement officer, code enforcement official, or other person designated by the board, or by leaving the notice at the violator's usual place of residence with some person of his family over 15 years of age and informing such person of the contents of the notice.

(b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the board, notice may also be served by publication, as follows:

(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the city. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements.

(2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(3) In lieu of publication as described in subsection (b)(1) of this section, such notice may be posted for at least ten days in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the front door of the city hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

~~Notice by publication may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by mail as required under subsection (a) of this section.~~

(c) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this section, together with proof of publication as provided in subsection (b) of this section, shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

(Ord. No. 98-4, § 14, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Sec. 14-45. Provisions supplemental.

It is the intent of this article to provide additional or supplemental means of obtaining compliance with local codes and ordinances. Nothing contained in this article shall prohibit the city from enforcing its codes by any appropriate civil action, or by referral to the state attorney's office for prosecution in the case of a criminal violation, and/or by presentation to any other city board or agency with jurisdiction to hear and act upon the alleged code or ordinance violation.

(Ord. No. 98-4, § 15, 6-1-1998; Ord. No. 02-10, § 1, 2-19-2002)

Secs. 14-46--14-70. Reserved.

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ARTICLE XIV. VEGETATION REMOVAL AND PROTECTION**Sec. 30-931. Purpose and intent.**

The purpose of this division is the protection of existing vegetation within the city by regulating its removal; to assist in the control of flooding, soil erosion, dust, heat, air pollution and noise; to maintain property, aesthetic and health values within the city; to limit the use of irrigation water in open space areas by promoting the preservation of existing plant communities; to limit the removal of existing viable vegetation when no landscape plans have been prepared for the site. It is not the intent of this division to restrict the mowing of nonprotected vegetation in order to meet the requirements of other sections of this code.

(Ord. No. 02-23, § 1, 9-3-2002)

Sec. 30-932. Applicability.

For the purpose of this article, unless listed under exemptions of this code, it shall be unlawful to remove or cause to be removed, native and/or exotic species of vegetation without first obtaining a vegetation removal permit and/or an exotic vegetation removal permit from the community development director.

For the purpose of this article, native vegetation references shall meet the statutory definitions and/or lists found in the state division of forestry, the state department of agriculture and the state department of natural resources. References to a specimen tree(s) in this ordinance shall refer to any tree(s) listed under the U.S. Endangered Species Act, Section 6.

Properties may be subject to provisions contained in the final Deltona Settlement Agreement (1982) which could affect the applicability of this ordinance. It is incumbent upon the property owner to ascertain whether their property is within the settlement area, and to know what limitations may apply subject to the settlement agreement. Inclusion of property in the settlement area may not relieve the owner of other jurisdictional, statutory or agency requirements.

(Ord. No. 02-23, § 2, 9-3-2002)

Sec. 30-933. Exemptions.

A generalized vegetation removal permit is not required for the removal of protected vegetation other than specimen trees when one of the following conditions is met:

- (1) A building permit has been issued for the principal structure.
- (2) The principal structure has been constructed, and the property owner or authorized agent is conducting the removal.
- (3) Property zoned agriculture (A) where the property is to be used for a bona fide agricultural use as defined by the land development code and application for an agricultural clearing permit has been filed with and approved by the community development director.
- (4) A site plan and vegetation protection plans have been reviewed and approved by the community development director as part of the final development order.
- (5) A state licensed tree farm/nursery, where such vegetation is intended for sale in

the ordinary course of the licensee's business and was planted for the described purpose.

(6) A state licensed land surveyor in the performance of his/her duties, provided such removal is for individual trees within a swatch less than three feet in width.

(7) Mangrove alteration projects that are exempted from state department of environmental protection permit requirements by F.A.C. 17-321.060.

(8) The city planning board may grant a variance to the provisions of this section if compliance with the mangrove tree preservation standards of this division would impose a unique and unnecessary hardship on the owner or any other person in control of affected property. Relief shall be granted only upon demonstration by the landowner or affected party that such hardship is peculiar to the affected property and not self-imposed, and that the grant of a variance will be consistent with the intent of this article and the comprehensive plan.

(Ord. No. 02-23, § 3, 9-3-2002)

Sec. 30-934. Vegetation removal permit application requirements.

(a) The community development director shall not issue a vegetation removal permit until all applicable federal, state, and local approvals have been obtained. These approvals may include, but are not limited to:

- (1) Building permits.
- (2) Special treatment (ST) development permits.
- (3) U.S. Army Corps of Engineers permits/exemptions.
- (4) State department of environmental protection permits/exemptions.
- (5) South Florida Water Management District permits/exemptions.
- (6) Other applicable agency reviews/permits/exemptions.
- (7) Other city approvals.

(b) Application for a vegetation removal permit shall be submitted to the community development director in writing on a form provided by the community development department. The application shall include the following information:

(1) A generalized vegetation inventory, based upon the most current available information, shall show the approximate location and extent of vegetation upon the site. For nonresidential and multifamily development, the inventory may be in the form of an aerial or a field survey, and may be accompanied by photographs or videotapes illustrating typical areas of vegetation referenced to positions on the aerial or survey.

(2) A brief written inventory assessment and evaluation of the plant communities that have been identified on the site shall be prepared by a person knowledgeable in the identification and evaluation of vegetative resources, such as a forester, biologist, ecologist, horticulturist, landscape architect, or certified nurseryman. The assessment shall include an evaluation of character and quality of the plant communities identified, including their rarity, viability, and such other physical characteristics and factors that may affect their preservation.

- (3) A site plan which includes:
- a. Property dimensions.

- b. Location of existing infrastructures and alterations.
- c. Location of proposed structures, infrastructure and alterations.
- d. The location and species of all protected vegetation. Large stands of a single species, such as mangroves, may be indicated as a group with an approximate number or area.
- e. Specific identification of all specimen trees.
- f. Designation of all protected vegetation proposed for removal.
- g. Location of detail of protective barricading of the vegetation to be retained.
- h. Description of any proposed alteration of mangroves.
- i. Description of any proposed maintenance trimming of mangroves.

(4) An executed statement that includes:

- a. Name, address, and phone of property owner.
- b. Name, address, and phone of authorized agent and on-site representative.
- c. Proof of ownership.
- d. Legal description.
- e. Reason for proposed removal.
- f. Method to distinguish vegetation to be removed from vegetation to be preserved and method of removal. It should be noted that the root system of the vegetation shall also be protected.
- g. Signature of property owner or copy of a specific contract signed by property owner.

(5) Vegetation relocation plan. If vegetation relocation is proposed by the applicant prior to site development plan, construction plan or other final approvals, a vegetation relocation permit (vegetation removal permit) may be issued by the community development director provided that it can be demonstrated that early transplantation will enhance the survival of the relocated vegetation. A vegetation relocation plan shall document methods of relocation, timing of relocation, watering provisions, maintenance and other information as required by the development services director.

(Ord. No. 02-23, § 4, 9-3-2002)

Sec. 30-935. Review procedures.

(a) *Issuance of permit.* Based on the information contained in the application and obtained from the on-site inspection, the community development director may approve or deny an application. An approved vegetation removal permit is valid for a period not to exceed 180 days except for mangrove alteration. Mangrove alteration permits shall be valid for the date of issuance by the state department of environmental protection. An extension requested prior to expiration of the original permit may be granted for good cause shown upon written application to the community development director. The community development director may attach conditions to the permit relative to the methods of designating and protecting vegetation not proposed for removal. A violation of these conditions shall be cause to void the vegetation removal permit.

(b) *Denial of permit.* In the event the community development director denies an application,

the reason(s) shall be noted on the application and returned promptly.

(c) *Permit fees.* All vegetation removal and clearing permit applications requiring review and approval shall be charged a review fee unless specifically exempted by the community development director pursuant to this code. The city council shall establish and adopt, by resolution, a schedule of fees for vegetation removal, review and approval permits. The schedule of fees and the resolution establishing such fees shall be on file with the city clerk. The schedule of fees may be changed by resolution of the city council.

(Ord. No. 02-23, § 5, 9-3-2002)

Sec. 30-936. Prohibited exotic vegetation removal.

(a) Exotic vegetation removal is unlawful without first obtaining a permit. A vegetation removal fee shall not be required to remove currently listed prohibited exotic vegetation. Prior to issuance of a building permit, prohibited exotic vegetation may be removed from lots which are zoned residential single-family (RSF), and mobile home (MH).

(b) (1) The city may require an adjoining property owner(s) to remove prohibited exotic species from adjacent properties at the time a building permit is issued. And further, the city shall require property owners to remove exotic species that are deemed to present a threat to public health, safety, and welfare. The following list is an example of exotic vegetation found on Marco Island:

- a. Australian Pine (*Casuarina* spp.).
- b. Melaleuca (*Melaleuca* spp.).
- c. Brazilian Pepper (*Schinus terebinthifolius*).
- d. Earleaf Acacia (*Acacia auriculiformis*).
- e. Catclaw Mimosa (*Mimosa pigra*).
- f. Java Plum (*Syzygium cumini*).
- g. Downy Rosemyrtle (*Rhodomyrtus tomentosus*).
- h. Women's Tongue (*Albizia lebbekii*).

(2) Prohibited exotic vegetation removal and methods of removal shall be conducted in accordance with the specific provisions in each local development order.

(3) Protection of native vegetation shall be required during prohibited exotic vegetation removal.

(4) Prohibited exotic vegetation shall be removed:

- a. From all rights-of-way, common area tracts not proposed for development and easements prior to preliminary acceptance of the phase of the required subdivision improvements;
- b. From within the associated phase of the final site development plan prior to the issuance of a certificate of occupancy.
- c. From single-family and two-family lots for all new principal dwelling units before a certificate of occupancy is granted. The removal of prohibited exotic vegetation shall be required in perpetuity.

(5) ~~Verification of prohibited exotic vegetation removal shall be performed by the community development director's field representative.~~

a. Herbicides utilized in the removal of prohibited exotic vegetation shall have been approved by the U.S. Environmental Protection agency.

b. When prohibited exotic vegetation is removed, but the base of the vegetation remains, the base shall be treated with an U.S. Environmental Protection Agency approved herbicide and a visual tracer dye shall be applied.

(6) A maintenance plan shall be submitted to the community development director for review on sites which require prohibited exotic vegetation removal prior to the issuance of the local development order. This maintenance plan shall describe specific techniques to prevent reinvasion by prohibited exotic vegetation of the site in perpetuity. This maintenance plan shall be implemented on a yearly basis at a minimum.

(Ord. No. 02-23, § 6, 9-3-2002)

Sec. 30-937. Vegetation protection and removal.

(a) *Vegetation protection.* In general, during construction, all reasonable steps necessary to prevent the destruction or damaging of vegetation shall be taken, including the installation of protective barriers. All new development not specifically exempted by this article shall retain existing native vegetation to the maximum extent possible, especially where said native vegetation exists within required buffer areas. Vegetation destroyed or receiving major damage must be replaced by vegetation of equal environmental value, as specified by the community development department, before occupancy or use unless approval for their removal has been granted under permit.

(1) *Filling and construction debris.* During construction, unless otherwise authorized by the vegetation removal permit, no excess soil, additional fill, equipment, liquids, or construction debris, shall be placed within the dripline of any vegetation that is required to be preserved in its present location.

(2) *Attachments.* Unless otherwise authorized by the vegetation removal permit, no attachments or wires other than those of a protective or nondamaging nature shall be attached to any vegetation during construction.

(3) *Excavation.* Unless otherwise authorized by the vegetation removal permit, no soil is to be removed from within the dripline of any vegetation that is to remain in its original location.

(4) *Protective barriers.* All protective barriers shall be installed and maintained for the period of time beginning with the commencement of any phase of land clearing or building operations and ending with the completion of that phase of the construction work on the site, unless otherwise approved to be removed by the community development director's field representative. All protective barriers shall be installed pursuant to the Tree Protection Manual for Builders and Developers, Division of Forestry, State of Florida or other methods approved by the community development director.

a. Areas to be preserved shall be protected during land alteration and construction activities by placing a continuous barrier around the perimeter of the area of vegetation to be preserved. This barrier shall be highly visible and constructed of wood stakes set a maximum of ten feet apart, at a height range of two to four feet, all covered continuously with brightly colored, all-weather mesh material or equal type barrier method. An equivalent method may be substituted with the approval of the community development director.

b. When the preservation of single trees is required by this code, a protective

barrier shall be placed around the tree at a distance from the trunk of six feet or beyond the dripline, whichever is greater, or as otherwise approved by the community development director's field representative.

(b) *Removal of protected vegetation.* The community development director may approve an application for vegetation removal permit based on the following criteria:

- (1) Protected vegetation is a safety hazard to pedestrian or vehicular traffic, public services, utilities, or to an existing structure.
- (2) Diseased, dead or otherwise unhealthy vegetation as determined by standard horticultural practices and if required, a site inspection by the community development director's field representative.
- (3) A final local development order has been issued which requires removal of the protected vegetation.
- (4) Compliance with other codes and/or ordinances may involve protected vegetation removal.
- (5) The approval for an application involving vegetation removal activity shall be granted only if the community development director finds that reasonable efforts have been undertaken in the layout and design of the proposed development to preserve existing vegetation and to otherwise enhance the aesthetic appearance of the development by the incorporation of existing vegetation in the design process. Relocation or replacement of vegetation may be required as a condition to the issuance of an approval in accordance with the criteria set forth in this division.
- (6) Protected vegetation proposed for removal is nonnative. Replacement of nonnative vegetation shall be with native vegetation of comparable caliper and area and shall be subject to the approval of the community development director or his/her designee. In the event that comparable caliper or diameter at breast heights (dbh) vegetation is not available, smaller dbh trees that total the requisite caliper may be substituted. Under no circumstances will a tree or shrub less than the minimum size requirement for landscaping be accepted. Replacement native vegetation shall be planted within 14 calendar days of removal.
- (7) On a parcel of land zoned residential single-family (RSF) or other nonagricultural, noncommercial zoning district in which single-family lots have been subdivided for single-family use only, a vegetation removal permit may be issued for any permitted accessory use to that zoning.
- (8) The proposed mangrove alteration has a state department of environmental protection permit or meets the permitting standards in F.A.C. 17-321.030, 17-321.050, 17-321.100, 17-321.801, 17-321.802, or 17-321.803 as may be amended.

(Ord. No. 02-23, § 7, 9-3-2002)

Sec. 30-938. Restoration and penalties.

(a) *Restoration standards.* The person(s) responsible for violations of the environmental sections of this article shall be notified according to this article and shall have 30 days to prepare a mitigation plan that is acceptable to the city to resolve the violation. The mitigation plan shall be submitted to the community development director and/or staff for review and comment. Once the community development director accepts the plan, the responsible party shall have 15 days to complete the mitigation unless other arrangements are specified and agreed upon in the mitigation plan.

- (1) Requirements for a mitigation plan:

- a. A copy of the deed, contract for sale or agreement for sale or a notarized statement of ownership clearly demonstrating ownership and control of the subject lot or parcel of land, or permission from the landowner to mitigate on his or her site shall be provided.
- b. The mitigation plan shall be prepared by a person who meets or exceeds the credentials specified in this article.
- c. The plan shall designate the person's name, address and telephone number that prepared the plan.
- d. A north arrow, scale, and date shall be required on the plan.
- e. Existing vegetation areas shall be shown.
- f. The proposed planting areas shall be clearly defined.
- g. The plan shall denote the number and location of each plant to be planted, or for the case of ground covers, show them in groupings. Large mitigation areas may be designated by a more simplified method.
- h. All plants proposed shall be denoted by genus, species, and the common name.
- i. The plan shall identify what is adjacent to the mitigation areas, i.e. existing forest (provide type), farm, natural buffer area, lake, etc.

(2) The mitigation plan shall include the following minimum planting standards:

- a. In the successful replacement of trees illegally removed, replacement trees shall be of sufficient size and quantity to replace the diameter at breast height (dbh) inches removed. In addition, the understory vegetation shall be restored to the area from which protected trees were unlawfully removed. The selection of plants shall be based on the characteristics of the Florida Land Use, Covers and Form Classifications System (FLUCCS) Code. Shrubs, ground cover, and grasses shall be restored as delineated in the FLUCCS Code. The species utilized shall be with relative proportions characteristic of those in the FLUCCS Code. The exact number and type of species required may also be based upon the existing indigenous vegetation on the adjacent property at the discretion of the community development director. (Dbh is defined for the purposes of this article as diameter of the tree, measured at a height of 4.5 feet above natural grade.)
- b. Each replacement tree shall be native Florida grade no. 1 as graded by the state department of agriculture and consumer services, grades and standards for nursery plants. All plants not listed in this manual shall conform to FL no. 1 as to health and vitality, conditions of foliage, root system and free of pest or mechanical damage.
- c. All replacement trees shall be nursery grown, containerized and at a minimum be seven to eight feet in height, have minimum caliper of one to 1 1/2 inches at 12 inches above natural grade.
- d. Replacement trees shall have a guarantee of 80 percent survivability for a period of not less than three years. A maintenance provision of not less than three years must be provided in the restoration plan to control invasion of currently listed exotic vegetation.
- e. ~~It shall be at the discretion of the community development director to allow for any deviation from the above specified ratio.~~