

CITY OF MARCO ISLAND

ORDINANCE 02-24

**ENVIRONMENTAL IMPACT STATEMENT (EIS) AND SPECIAL TREATMENT
OVERLAY (ST) DISTRICT STANDARDS**

AN ORDINANCE TO ESTABLISH NEW ENVIRONMENTAL IMPACT STATEMENT (EIS) AND SPECIAL TREATMENT OVERLAY DISTRICT (ST) STANDARDS AND REGULATIONS TO SUPERCEDE, SUPPLEMENT, AND/OR REPLACE STANDARDS AND REGULATIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO ENVIRONMENTAL IMPACT STATEMENTS (EIS) AND LAND WITHIN THE SPECIAL TREATMENT OVERLAY ON MARCO ISLAND; ESTABLISHING PURPOSE AND INTENT; ESTABLISHING APPLICABILITY; PROVIDING FOR SUBMISSION AND REVIEW OF EIS; PROVIDING FOR INFORMATION REQUIRED FOR APPLICATION; PROVIDING FOR SPECIFICS TO ADDRESS; PROVIDING FOR ADDITIONAL DATA; PROVIDING FOR EXEMPTIONS; PROVIDING FOR RELATION BETWEEN EIS AND DEVELOPMENT OF REGIONAL IMPACT (DRI); PROVIDING FOR THE SPECIAL TREATMENT OVERLAY DISTRICT (ST); PROVIDING FOR PERMISSIBLE USES, DEVELOPMENT STANDARDS, REGULATIONS, AND PROCEDURES FOR SPECIAL TREATMENT LANDS; PROVIDING FOR SPECIAL TREATMENT EXCEPTIONS AND EXEMPTIONS; PROVIDING FOR TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING FOR FEES; PROVIDING FOR APPEALS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, state law requires municipalities to adopt Land Development Regulations consistent with the adopted Comprehensive Plan; and

WHEREAS, the Marco Island Planning Board, as the Local Planning Agency, has conducted all required public hearings related to this ordinance, and has forwarded this ordinance to City Council with a recommendation of approval.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION ONE: PURPOSE AND INTENT

1. The purpose of this division is to provide a method to objectively evaluate the impact of a proposed development, site alteration, or project upon the resources and environmental quality of the project area and the community and to insure that planning and zoning decisions are made with a complete understanding of the impact of such decisions upon the environment, to encourage projects and developments that will:
 - a. Protect, conserve and enhance, but not degrade, the environmental quality and resource of the particular project or development site, the general area and the greater community.
 - b. Minimize the future reduction in property values likely to result, or be caused by improperly designed and executed projects and developments.
 - c. Reduce the necessity for expenditure of public funds in the future for rehabilitating the environmental quality of areas of environmental sensitivity.
2. Further, it is the purpose of this division to attain the widest range of beneficial uses of the environment without degradation of environmental advantages and risk to public health, safety, welfare and other undesirable consequences.
3. Properties may be subject to provisions contained in the final Deltona Settlement Agreement (1982) which could affect the applicability of this code. 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.

SECTION TWO: APPLICABILITY; ENVIRONMENTAL IMPACT STATEMENT (EIS) REQUIRED

It shall be unlawful and no building permit, conditional use, zoning change, subdivision or other permit approval for development or site alteration shall be issued without first obtaining approval of an EIS, or exemption pursuant to this ordinance, as required by this code:

1. Any site over 10 acres with a ST overlay designation.
2. All sites seaward of the Coastal Construction Control Line (CCCL) that are 2.5 or more acres.
3. All sites landward of the Coastal Construction Control Line (CCCL) that are ten or more acres.
4. Any other development or site alteration, which in the opinion of the community development director, would have substantial impact upon environmental quality and which is not specifically exempted in this code. In determining whether such a project would have substantial environmental impact the community development director shall base his decision on the terms and conditions described in this code and on the project's consistency with the comprehensive plan.

SECTION THREE: SUBMISSION AND REVIEW OF EIS

A completed EIS, signed by the property owner or his designated agent, shall be submitted to the community development director for approval, denial or approval with modifications. No development or site alteration will be started without this approval and permits required by law. Failure to provide full and complete information shall be grounds for denial of the application. The author(s) of the EIS shall provide evidence, by academic credentials or experience, of his/her expertise in the area of environmental sciences or natural resource management. Academic credentials shall be a bachelor's or higher degree in one of the biological sciences. Experience shall reflect at least three years, two years of which shall be in the State of Florida, of ecological or biological professional experience if substituting for academic credentials.

SECTION FOUR: INFORMATION REQUIRED FOR APPLICATION

1. Applicant information.
 - a. Responsible owner(s)/agent(s) who wrote the EIS and his/her education and job related environmental experience.

- b. Owner(s)/agent(s) name, address.
 - c. Affidavit of proof of authorized agent.
2. Development and site alteration information.
- a. Description of proposed use.
 - b. Legal description of site.
 - c. Location and address description.
3. Mapping and support graphics.
- a. General location map.
 - b. Native habitats and their boundaries shall be identified on an aerial photograph of the site extending at least 200 feet outside the parcel boundary. This does not mean the applicant is required to go on to adjacent properties. Habitat identification will be consistent with the Florida Department of Transportation Florida Land Use Cover and Forms Classification System and shall be depicted on an aerial photograph having a scale of one inch equal to at least 400 feet is acceptable. Information obtained by ground-truthing surveys shall have precedence over information presented through photographic evidence.
 - c. Topographic map showing upland, bathymetric contours and existing drainage patterns if applicable.
 - d. Existing land use of site and surrounding area.
 - e. Soils map at scale consistent with that used for Florida Department of Transportation Florida Land Use Cover and Forms Classification System determinations.
 - f. Proposed drainage plan indicating basic flow patterns, outfall and off-site drainage.
 - g. Development plan including phasing program, service area of existing and proposed public facilities, and existing and proposed transportation network in the impact area.
4. Impact categories.
- a. Biophysical.
 - (i) Air quality.

- (1) Changes in level of air pollutants as defined by current regulations.
- (2) Number of people that will be affected by air pollution resulting from the project.
- (3) Procedures that will be used to reduce adverse impacts of air pollution.

(ii) Water quality.

- (1) Changes in levels and types of water pollution as defined by current regulations.
- (2) Inventory of water uses that are restricted or precluded because of pollution levels resulting from this project.
- (3) Person affected by water pollution resulting from the project.
- (4) Project designs and actions, which will reduce adverse impacts of water pollution.

(iii) Physiography and geology.

- (1) A description of the soil types found in the project area.
- (2) Aerial extent of proposed topographic modification through excavation, dredging and filling.
- (3) Removal and/or disturbance of natural barriers to storm waves and flooding.
- (4) Proposed modifications to natural drainage patterns.
- (5) Extent of impervious surface and percent of groundwater recharge area to be covered.
- (6) Annual draw down of groundwater level resulting from use.
- (7) Increased siltation in natural water bodies resulting from the proposed use.

(iv) Wetlands.

- (1) Define number of acres of City of Marco Island jurisdictional wetlands by vegetation type (species), vegetation composition (canopy, midstory and ground cover), vegetation abundance (dominant, common and occasional), and their wetland functions.
- (2) Determine present seasonal high water levels and historical high water levels by utilizing lichen lines or other biological indicators.

- (3) Indicate proposed percent of defined wetlands to be impacted and the effects of proposed impacts on functions of wetland areas.
- (4) Indicate proposed percent of defined wetlands to be impacted and the effects of proposed impacts on functions of wetland areas.
- (5) Indicate how the project design minimizes impacts on wetlands.
- (6) Indicate how the project design shall compensate for the wetland impacts.

(v) Upland utilization and species of special status.

- (1) Define number of acres of uplands by vegetative type (species), vegetation composition (canopy, midstory, and ground cover), vegetation abundance (dominant, common and occasional) and their upland functions.
- (2) Indicate proposed percent of defined uplands to be impacted and the effects of proposed impacts on functions of upland areas.
- (3) Indicate how the project design minimizes impacts on uplands.
- (4) Provide a plant and animal species survey to include at a minimum, species of special status that are known to inhabit biological communities similar to those existing on-site and conducted in accordance with the guidelines of the Florida Fish and Wildlife Conservation Commission.
- (5) Indicate how the project design minimizes impacts on species of special status (Endangered, Threatened and Species of Special Concern).

(vi) Marine and estuarine resources.

- (1) Provide current State of Florida classification of the waters (Florida Administrative Code, Chapter 17-3).
- (2) Define number of acres of marine and estuarine resources by submerged grass beds, breeding areas and nursery areas and their marine and estuarine functions.
- (3) Indicate proposed percent of defined marine and estuarine resources to be impacted and the effects of proposed impacts on functions of marine and estuarine resources.
- (4) Estimate changes in the dockside landing of commercial fish and shellfish.
- (5) Estimate changes in the sport fishing effort and catch.
- (6) Provide past history of any environmental impacts to the area including oil spills.

- (7) Indicate how the project design minimizes impacts on marine and estuarine resources.
- (8) Indicate how the project design shall replace the lost marine and estuarine functions.

(vii) Noise.

- (1) Describe the changes in decibels and duration of noise generated during and after the project (both day and night) that will exceed City of Marco Island regulations.
- (2) Describe steps that will be taken to reduce noise levels during and after project.

b. Public facilities and services.

(i) Wastewater management.

- (1) Describe existing treatment facilities as to capacity, percent capacity being uses, type of treatment and degree of treatment.
- (2) If applicable, describe similar features of proposed new treatment facilities.
- (3) Describe the character and fate of both liquid and solid effluents.

(ii) Water supply.

- (1) Estimate of average daily potable and nonpotable water demands by the project.
- (2) Source of the raw water supply.
- (3) Analysis of on-site treatment systems relative to state and county standards.

(iii) Solid wastes.

- (1) Estimate of average daily volume of solid wastes.
- (2) Proposed method of disposal of solid wastes.
- (3) Any plans for recycling or resource recovery.

(iv) Recreation and open spaces.

- (1) Acreage and facilities demand resulting from the new use.
- (2) Amount of public park/recreation land donated by the developer.
- (3) Management plans for any open water areas if one-half acre or more within the project.

- (4) Plans for recreational development by the developer on dedicated lands.
- (5) Amount of public recreation lands removed from inventory by the new use.
- (6) Development and/or blockage of access to public beaches and waters.

(v) Aesthetic and cultural factors.

- (1) Provide documentation from the Florida Master Site File, Florida department of state and any printed historic archaeological surveys that have been conducted on the project area.
- (2) Locate any known historic or archaeological sites and their relationships to the proposed project design.
- (3) Demonstrate how the project design preserves the historic/archaeological integrity of the site.
- (4) Indicate any natural scenic features that might be modified by the project design and explain what actions shall be utilized to preserve aesthetic values.
- (5) Provide the basic architectural and landscaping designs.

(vi) Monitoring.

- (1) Describe the design and procedures of any proposed monitoring during and after site preparation and development

SECTION FIVE: SPECIFICS TO ADDRESS

1. General. The statement should specifically address the following:
 - a. Indicate how the proposed project has incorporated the natural, aesthetic and cultural resources and other environmental considerations in the planning and design of the proposed project.
 - b. List the environmental impact(s) of the proposed action and the reason(s) that the impact(s) are unavoidable and that the impact(s) represent the minimum impacts possible to the environmental quality of the site and/or the surrounding area, which might be affected by the proposed use.
 - c. Provide substantiated alternatives to the proposed project so that reasons for the choice of a course of action are clear, not arbitrary or capricious.
 - d. List immediate short term and long-term impacts to the environment.

- e. List any irreversible and irretrievable commitments of natural resources which would be involved in the proposed action should it be implemented.

SECTION SIX: ADDITIONAL DATA

The community development director may require any additional data or information necessary in order to make a thorough and exact evaluation of the EIS.

SECTION SEVEN: EXEMPTIONS

1. Single-family or duplex use on a single lot or parcel. Exemption shall not apply to any parcel with a ST overlay, unless otherwise exempted by this code.
2. Any area or parcel of land, which due to prior human intervention, is no longer considered an area of environmental sensitivity. Such a determination shall be rendered by the Community Development Director or designee.

SECTION EIGHT: RELATION BETWEEN EIS AND DEVELOPMENT OF REGIONAL IMPACT (DRI)

In any instance where the proposed project requires both an EIS and a DRI, their data may be embodied in one report provided such report includes all the required information on both the EIS and DRI.

SECTION NINE: SPECIAL TREATMENT OVERLAY

1. Continuation of ST overlay district. An overlay zoning district classification known as the ST special treatment overlay district, and currently designated on the official zoning atlas by the symbol "ST" together with the symbol of the basic zoning district which it overlays, is hereby acknowledged and accepted. This overlay district classification will be used for those lands of environmental sensitivity and historical and archaeological significance where the essential ecological or cultural value of the land is not adequately protected under the basic zoning district regulations established by this code or by ordinance.
2. Continuation of P-ST overlay district. For purposes of identifying existing land from which the residential development rights have been transferred, such land is designated on the official zoning atlas by affixing the letter "P" for preservation to the symbol "ST," thusly "P-ST." Any new

designation shall be placed on the land after the City Council has accepted the deed and /or guarantee to said property.

SECTION TEN: PERMISSIBLE USES ON ST LANDS

1. General.

- a. Land designated ST shall be used only for the permitted principal use, the permitted accessory use, and/or the permitted conditional use under the basic underlying zoning district classification of such land. In all other cases, temporary uses, may be permitted.
- b. The consideration of an application for a permitted conditional use shall be subject to a public hearing. This hearing may run concurrently with any public hearing required by this section or may be held at a separate time.
- c. The fact that a use is permitted under the basic zoning district classification shall confer no right to the property owner for such use unless such use is specifically approved as a condition of approval of a site alteration plan and/or site development plan as provided in this Land Development Code.

SECTION ELEVEN: EXCEPTIONS AND EXEMPTIONS

1. *Exceptions.* Where land has an ST designation and the proposed alteration or development area contains 10 acres or less in gross area, and where no transfer of development rights are involved, the community development director may approve site alteration or site development plan. Prior to such approval, the community development director shall make a finding that the following conditions exist:
 - a. The proposed site alteration or site development plan will not require any modification, with the exception of exotic vegetation removal, of the topography, drainage, flora, or fauna on the site.
 - b. Single-family principal structure where the proposed site alteration or site development plan will not require any significant modification of topography, drainage, flora, or fauna on the site, or where the alteration involves the renovation or replacement of a single family structure. Significant modification shall mean greater than ten percent of the site.
 - c. No pollutants will be discharged from the area that will degrade the air, water or soil below the levels existing at the time of application.

2. *Exemptions.* The following shall be exempt from the requirements of this section:

- a. Removal and control of exotic vegetation.

SECTION TWELVE: TRANSFER OF DEVELOPMENT RIGHTS

An owner of land located within areas designated with the ST overlay, may seek to transfer some or all of the residential development rights from one parcel of land to another parcel located in the urban designated area of unincorporated Collier County, as an alternative to the development. The lands to which the development rights are to be transferred shall be referred to as receiving lands and those lands from which development rights are transferred shall be referred to as sending lands. Owners of eligible sending land seeking to transfer development rights shall adhere to provisions contained in the Collier County Land Development Code.

SECTION THIRTEEN: FEES

In order to implement, maintain and enforce this code, the cost upon submission of the environmental impact statement shall be as established by resolution. Until this fee has been paid in full no action of any type shall be taken.

SECTION FOURTEEN: APPEALS

Any person aggrieved by the decision of the community development director regarding any section of this code may file a written request for appeal, not later than ten days after said decision, with the City Council or their successor organization. The City Council will notify the aggrieved person and the community development director of the date, time and place that such appeal shall be heard; such notification will be given 21 days prior to the hearing unless all parties waive this requirement. The appeal will be heard by the City Council within 60 days of the submission of the appeal. Ten days prior to the hearing the aggrieved person shall submit to the City Council and to the community development director copies of the data and information he intends to use in his appeal.

Upon conclusion of the hearing the facts, findings and recommendations, the City Council, in regular session, will make the final decision to affirm, overrule or modify the decision of the community development director.

SECTION FIFTEEN: INCORPORATION, CONFLICT AND SEVERABILITY

1. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.
2. All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County ordinances or parts of ordinances, and all Collier County resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.
3. If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

SECTION SIXTEEN: EFFECTIVE DATE

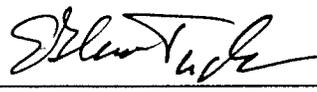
This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 3rd day of September, 2002.

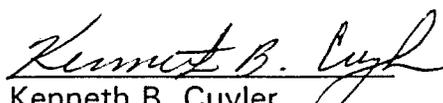
Attest:

CITY OF MARCO ISLAND, FLORIDA


A. William Moss
City Manager/City Clerk

By: 
E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:


Kenneth B. Cuyler
City Attorney