

**CITY OF MARCO ISLAND**

**ORDINANCE 01- 34**

**ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION**

**AN ORDINANCE TO ESTABLISH NEW ENDANGERED, THREATENED OR LISTED SPECIES PROTECTION 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 SPECIES PROTECTION ON MARCO ISLAND; ESTABLISHING PURPOSE AND INTENT; PROVIDING FOR NEW DEVELOPMENT; PROVIDING FOR PERMITTED ACTIVITIES WITHIN PROTECTION ZONES; PROVIDING FOR TAKING PROCEDURES; 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 within one year of Comprehensive Plan adoption; 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**

The purpose of this ordinance is to protect the species currently listed by the Florida Fish and Wildlife Conservation Commission (FFWCC), United States

Fish and Wildlife Service (USFWS) and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as endangered, threatened or of special concern or status in the City of Marco Island, Florida by including measures for protection and/or relocation of endangered, threatened, or species of special concern or status.

The presence of protected species on a parcel of property presents legitimate hardship, and may constitute reasonable grounds for consideration of a variance.

## SECTION TWO: NEW DEVELOPMENT

For new development the following, as applicable, shall serve as guidelines or standards for the protection of endangered, threatened or species of special concern or status as prescribed by the goals, objectives and policies of the conservation element of the Marco Island Comprehensive Plan:

1. Prior to submission of a building permit application, the applicant must survey the affected property for Burrowing Owl (*Specto cunicularia floridana*) and the Gopher Tortoise (*Gopherus polyphemus*) burrows. If a listed species is on the property, the appropriate State and/or Federal agency must be contacted for management guidelines.
2. If a listed species is found on the property, then the applicant must complete a Species of Special Concern Affidavit along with required building plans. This document shall inform the applicant that the owl and/or tortoise are protected species and that certain Federal, State, and City regulations apply and must be followed during the building activity on the property. The applicant shall provide the following information on the Affidavit:
  - (i) Applicant's name, address, and phone number
  - (ii) Address of property to be developed (Unit, Block, Lot)
  - (iii) Number and location of burrows located on property
  - (iv) Indicate whether State or Federal permits are needed to physically take the species and the burrow.
  - (v) Signature of applicant
  - (vi) Signature of witness

This information shall be posted at the site during all phases of construction activity. Any false information will be considered a violation of this ordinance and will place the applicant subject to penalty.

3. Further, a management plan shall be submitted for review and approval by the community development department for the management of on-site habitat and wildlife, including measures for protection and/or relocation of species of special status. Such plans shall comply with current federal, state and local policies. The City may consider and utilize recommendations and letters of technical assistance of the FFWCC, and recommendations and guidelines of the USFWS, in issuing developmental orders on property containing wildlife species of special status.

### SECTION THREE: PERMITTED ACTIVITIES WITHIN PROTECTION ZONES

The following activities are permitted within the protection zones of the burrowing owl and gopher tortoise burrows with the understanding that if any burrow does collapse, it must be reported immediately to the City of Marco Island to ensure proper rescue efforts can take place.

- (a) City approved volunteers who maintain burrows in designated zones in the City of Marco Island may conduct maintenance activities that shall include the clipping of vegetation within the protection zone, staking and roping the zone, and recording pertinent data.
- (b) Contractors may enter the protection zone to remove debris with the full understanding that they can do nothing to disturb or harm the species or burrow in any manner. Contractors and lawn/lot maintenance companies shall accept full responsibility for the actions of their employees to ensure that all laws protecting such species are adhered to.
- (c) City employees and property owners may enter the protection zone for the purpose of maintaining vegetation if using equipment that does not exert pressure on the ground to ensure the burrow does not collapse.
- (d) Scientific research/investigations approved by the FFWCC and/or the USFWS. The City of Marco Island shall be notified of all such research/investigations and provided with all study reports and publications.
- (e) Authorized representatives of developers including, but not limited to, professional environmental consultants that are conducting surveys or monitoring in conjunction with private or municipal construction.

### SECTION FOUR: TAKING PROCEDURES

Requirements for taking or protecting the species are as follows:

- (i) No active or inactive owl and/or gopher tortoise burrow may be taken without proper State permits.
- (ii) If State permit(s) are issued, they shall be posted on site during all phases of the construction.
- (ii) During the Burrowing Owl nesting season (February 15 through July 10) no building permits will be issued for applicants needing to take an owl burrow, unless the FFWCC have issued permits to take the owl burrow(s) during nesting season or permits have been issued to take the owl burrow(s) after nesting season and the construction can commence with a protection zone in place. The protection zone requirements shall be:
  - (a) A protection zone having a diameter of at least twenty (20) feet will be erected around each affected burrow during all phases of construction.
  - (b) Contractors will be responsible for maintaining the zone and informing all workers and subcontractors to avoid the zone and to do nothing to violate the burrow in such a way as to make it collapse. Any violation or destruction will place the contractor subject to penalty.

All protection plans shall be subject to review and approval by the environmental specialist of the development services department. The city may consider and utilize recommendations and letters of technical assistance of the FFWCC, and recommendations and guidelines of the USFWS, in issuing development orders on property containing wildlife species of special status.

#### SECTION FIVE: INCORPORATION, CONFLICT AND SEVERABILITY

- [A] 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.
- [B] 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.

- [C] 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 SIX: EFFECTIVE DATE

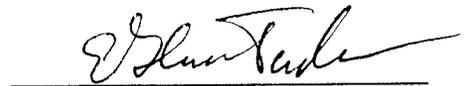
This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 5th day of November, 2001.

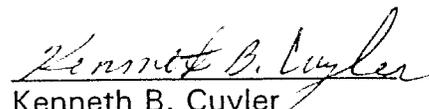
Attest:  
FLORIDA

CITY OF MARCO ISLAND,

  
A. William Moss  
City Manager/City Clerk

  
E. Glenn Tucker, Chairman

Approved as to form and  
Legal sufficiency:

  
Kenneth B. Cuyler  
City Attorney