

Additional Background on Key Marco and the Conservancy's Involvement

The Key Marco development is part of Horr's Island, an 804-acre mangrove island located between Goodland and the City of Marco Island. Horr's Island contains important environmental resources, including significant mangrove wetlands. However, this island also contains rare and unique uplands –tropical hammocks, coastal hammocks and low-oak scrubs. This ecosystem of mangrove fringe and tropical upland habitats has never been common in Collier County – it is a habitat more commonly seen in the Florida Keys. Its diversity and rarity make it a resource that warrants specific protective measures and oversight.



Florida Tree-snail (Liguus fasciatus), listed in Florida as a species of special concern, can be found on Key Marco.

Both the City and the Conservancy have an obligation to protect the preserves within Key Marco. Ensuring appropriate activities within the preserves is required by City Code, and both the City and the Conservancy were granted enforcement authority over Key Marco within the development's Plat. The Conservancy has further responsibility for ensuring these preserves are protected through the conservation easement we hold over Key Marco's 15 preserves.

The Conservancy has partnered with the City on homeowner education, informational outreach and enforcement action within Key Marco since its annexation into the City in 2004. There has been a long history of violations of City code, the Plat and our conservation easement, primarily with regard to excessive and illegal trimming of native vegetation. Initially, both the City and the Conservancy attempted to correct violations through educational outreach, encouraging replanting of trees instead of monetary penalties.

However, as violations continued and important native habitat was further destroyed, the City was left no choice but to begin official enforcement action. As

early as 2006, violations of code were being heard by the Code Enforcement Board, and the Conservancy supported City staff's finding of non-compliance.

In early 2009, the City cited Key Marco again for violations to City code regarding excessive trimming of native vegetation and vegetation removal without a permit within two preserves. In May 2009, after three days of hearings, numerous expert testimony and extensive participation by the Conservancy in support of the City, the Code Enforcement Board found Key Marco in violation of City code. They found that the removal of native vegetation constituted irreparable and irreversible harm to the preserves. Fines were imposed and mitigation ordered. Key Marco appealed the decision to circuit court.

Because the Code Enforcement Board's findings supported both City code and the Conservancy's conservation easement, the City desired our participation in upholding the Code Enforcement Board's decision in court. The avenue for participation was for the Conservancy to file an amicus brief, which just this month was allowed by the circuit court judge.

In addition to this appeal, Key Marco has also filed a separate action against the City to compel them to allow native vegetation to be removed within their preserves. Such an action would be inconsistent with City code and the Plat. As this would also be contrary to our conservation easement, the City requested the Conservancy intervene in this suit as a co-litigant with the City. The Conservancy willingly agreed to this, and we have filed motions to be an official intervenor. Even though the hearing on our motion to intervene is not until February, our legal council has been working closely with the City's council for the past several months on both of these suits.

Therefore, it was with great dismay that we learned last week that settlement negotiation with Key Marco and their legal council was instigated by one Council member and the City Manager. City legal representation was not present for this negotiation, nor was the settlement talk authorized or even discussed by Council. Even though other Council members were unaware of these discussions and did not authorize staff to engage in such dialogue, according to the City Manager, Council will be presented with a settlement for vote in December. The Conservancy believes that any settlement negotiation is inappropriate unless authorized by a vote of Council at a public meeting. Moreover, as the Conservancy, at the City's request, is involved in these suits, it is highly inappropriate to hold settlement negotiations without our participation.

For more information, please contact Nicole Ryan, Governmental Relations Manager, at (239) 403-4220.