



## **Standard Operating Procedures for Permit Review FEMA/FWS Settlement**

### **BACKGROUND**

In 1990, the National Wildlife Federation, Florida Wildlife Federation, and the Defenders of Wildlife filed suit against FEMA pursuant to the Endangered Species Act of 1973 on behalf of the endangered Key deer (*Odocoileus virginianus clavicum*) in the Florida Keys (Keys) claiming FEMA was not consulting with the U.S. Fish and Wildlife Service (FWS) pursuant to the Act. As a result, in 1997 the Service completed a Biological Opinion (BO) as directed by section 7 of the Act for the effects of the NFIP, administered by FEMA, on federally protected species in the Keys. The 1997 BO found the NFIP jeopardized nine species in the Keys (Monroe County, Florida). The lawsuit was settled formally in January of 2010. As a result of the settlement, FEMA has agreed to require the county and municipalities participating in the NFIP to adopt modified floodplain management ordinances which address the terms of the settlement. .

Of the nine (9) species identified in the FWS BO, three (3) POTENTIALLY exist in Marathon, the Keys tree cactus, the eastern indigo snake and the Stock Island tree snail. The FWS provided Species Focus Area and Species Buffer maps and a list of Real Estate numbers that include all parcels of land whose development might cause an impact to potential suitable habitat of these species. FWS also provided Species Assessment Guides (SAGs) to aid in the determination of whether a proposed development is likely to adversely affect any of the covered species. The County Staff will use the SAGs to conduct an initial review of each permit applied for in these areas. Proposed development determined to have "No Affect" (NA) or which is "Not Likely to Adversely Affect" (NLAA) will be approved locally with conditions (protective measures) intended to protect the potentially impacted species. The condition precisely mirror local protection measures for habitat and protected species. Proposed development that results in a "May Affect" (MA) determination will be referred to FWS for final determination.

### **WRITTEN PROCEDURES FOR PERMIT REVIEW, APPROVAL, AND/OR REFERRAL PROCESS:**

The following written procedures are established in accordance with paragraph 5 of the Reasonable and Prudent Alternatives (RP A), referenced in the FWS Biological Opinion dated April 30, 2010 and amended on December 14, 2010.

- 1) Applicant makes an application for a City of Marathon building permit.
- 2) Staff checks the parcel ID with the FEMA/FWS list to determine if the parcel is **On The List**.
  - a) If the parcel is **Not On The List** – Permit is issued
    - i) A Cat brochure is provided to the permittee
    - ii) Staff documents the issuance of the permit
    - iii) The City reports to FEMA/FWS.
  - b) If the parcel is **On The List** – Go To Step 3

*(Note: The City's Permitting software automatically identifies whether parcels are On The List*
- 3) Staff checks to see if the parcel is **Exempt** or **Not Exempt** from further review under the RPAs
  - a) If the parcel is **Exempt** Permit is issued
    - i) A Cat brochure is provided to the permittee
    - ii) Staff documents the issuance of the permit
    - iii) The City reports to FEMA/FWS.

(Note: A permit is determined to be exempt if it is for work within the footprint of any existing structures or if there are no impacts to habitat on the property)

b) Parcel is not exempt – Go To Step 4

- 4) Planning staff reviews the parcel for impacts, following the SAGs provided by FEMA/FWS.
- 5) Using the SAGs, staff determines whether the proposed development **May Affect (MA)**, is **Not Likely to Adversely Affect (NLAA)**, or will have **No Affect (NA)** on the habitat of the Endangered & Threatened Species subject to the Settlement.
  - a) If proposed activity on the parcel is determined as **NA**, Permit is issued with conditions identifying appropriate protective measures
    - i) Permittee receives a copy of FWS's protection measures for the appropriate species;
    - ii) Permittee agrees to implement the measures; and
    - iii) Permittee signs verification for the permit file.
    - iv) A Cat brochure is provided to the permittee
    - v) Staff documents the issuance of the permit
    - vi) The City reports to FEMA/FWS.

vii) If the applicant refuses permit conditions specified under City Code and/or the RPA, then the permit is denied or further referred to FWS.
  - b) If proposed activity on the parcel is determined as **NLAA** Permit is issued with conditions identifying appropriate protective measures and habitat compensation.
    - i) Permittee must propose either on-site or off-site habitat compensation commensurate with the amount of native habitat lost;
    - ii) Permittee agrees to implement the measures; and
    - iii) Permittee signs verification for the permit file.
    - iv) A Cat brochure is provided to the permittee
    - v) Staff documents the issuance of the permit
    - vi) The City reports to FEMA/FWS.

vii) If the applicant refuses permit conditions specified under City Code and/or the RPA, then the permit is denied or is further referred to FWS.
  - c) If proposed activity on the parcel is determined as **MA**, the applicant's file is forwarded to USFWS and FEMA for further review.
- 6) FEMA/FWS determination is issued stating issuance of a permit is appropriate/inappropriate
  - a) If a permit is deemed appropriate by FWS, then:
    - i) Required protective measures are identified and compensation, if any, for habitat loss is established.
    - ii) Permittee agrees to implement the measures; and
    - iii) Permittee signs verification for the permit file.
    - iv) A Cat brochure is provided to the permittee
    - v) Staff documents the issuance of the permit
    - vi) The City reports to FEMA/FWS.
  - b) If a permit is deemed inappropriate by FEMA/FWS, then the Permit is denied and action through the FEMA 1316 process may be initiated.
- 7) Subsequent to permit issuance, if a permittee violates any conditions of their permit, then
  - a) If a Certificate of Occupancy (C.O.) is pending, the violation will be managed through the permit process. At the extreme, the permit may be revoked.
  - b) If a C.O. has been issued, then a Notice of Violation may be issued under the City's Code of Ordinances.

- i) If the violation is resolved at an administrative level, then no further action will be required.
- ii) If the violation is not resolved, then the Notice of Violation will be taken before the City's Code Compliance Board for deliberation and action.
- iii) If the violation remains un-resolved at the level of the City's Code Compliance Board, then the City will initiate action through the 1316 process with FEMA.