

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 ENVIRONMENT AND NATURAL RESOURCES ¹

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¹Cross reference(s)—Open space, buffering and landscaping, § 10-411 et seq.; protection of habitat, § 10-471 et seq.; environmentally sensitive areas, § 34-1571 et seq.

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**ARTICLE I. BEACH AND
DUNE MANAGEMENT ²**

Sec. 14-1. Definitions.

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word “shall” is always mandatory.

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beach furniture or equipment means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

Beach width means the perpendicular distance measured from the edge of wet sand to the place

² **Cross reference(s)**—Sea turtle conservation, article II of ch. 14; personal watercraft and parasailing, ch. 27; water-oriented rentals, div. 41 of article IV of ch. 34.

where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

Director means the person to whom the town manager has delegated the authority to administer this article, or that person’s designee.

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morning glory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

Hand raking means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the “wrack line.”

Mechanical beach raking means a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of § 14-6(c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle, as approved by the town, that meets the maximum ground-to-tire pressure found in § 14-6(c).

Seaward line of vegetation means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Wrack line means a well-defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the town, are not included in the definition of “wrack line.”

Sec. 14-2. Purpose and intent.

- (a) The purpose of this article is:
 - (1) To encourage a steward-like attitude toward the town’s most valuable asset, the beach.
 - (2) To preserve and improve the condition of that asset as a place for recreation, solitude, and preservation of beach vegetation and marine wildlife.

(b) This article provides minimum standards to safeguard the beach.

Sec. 14-3. Destruction or diminishment of dune or beach system.

(a) It is unlawful and prohibited for any person to do, conduct, or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach:

- (1) harass, molest, or disturb wildlife;
- (2) plant vegetation other than dune vegetation;
- (3) destroy or harm a dune or remove dune vegetation;
- (4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (see § 14-4);
- (5) deposit and leave human or animal waste (see § 14-4);

- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 14-6;
- (7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in § 14-7;
- (8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;
- (9) detonate any explosive devices, including fireworks;
- (10) discharge any firearms;
- (11) light or maintain any open fire on Mulholland Point (Little Estero Island);
- (12) temporarily reside, camp, or sleep overnight;
- (13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the town;
- (14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material shall be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
- (15) conduct any commercial activities not explicitly authorized by this code or by other town ordinances.

(b) Permits may be issued by the town manager for activities otherwise prohibited by this section, which are found to be necessary for reasonable accommodation of persons with disabilities; adjunct to a lawfully existing activity; for the conduct of a civic or educational activity; for the conduct of scientific research; or for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is allowed under this code for any of the above activities, the standards and procedures for issuance shall be governed by this code.

Sec. 14-4. Trash and litter on the beach.

(a) Pursuant to Ordinance 99-5, dogs on a leash are allowed on the beaches within the town, but owners must properly dispose of any type of dog waste off the beach. However, no pets shall be

allowed within the confines of the Critical Wildlife Area (CWA)/Mulholland Point (Little Estero Island) whose territory is defined as follows: This area includes the island itself and the wetlands and lagoons that have formed behind the island; the northern boundary is the Holiday Inn's southern riparian line, and the easterly line is the mean high water line of the old developed shoreline.

(b) Pursuant to Ordinance 99-7, trash and litter must be deposited within trash receptacles and not left on the beach.

(c) Any person wishing to light an open fire on the beach, except on Mulholland Point (Little Estero Island) as prohibited by § 14-3 (a)(11) and during sea turtle nesting season as prohibited by § 14-78(a), is limited to a 12 inch by 12 inch cooking fire that must be applied for as a permit through Town Hall. The permit will require a \$30.00 deposit for cleanup.

Sec. 14-5. Beach furniture and equipment.

(a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:

- (1) All beach furniture and equipment must be removed from the beach between the hours of 9:00 P.M. until 7:00 A.M.
- (2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.
- (3) Beach furniture and equipment that is removed from the beach as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. All stacked items will be secured either by cable or chain to prevent the removal and scattering of items by unauthorized individuals at night. The cable and/or chain must be kept off the ground as these items pose a serious entanglement hazard.

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and 7:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

(d) All beach furniture and equipment (such as chairs, umbrellas, cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation.

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

- (1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by an FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
- (2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
- (3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1.

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or

within ten feet (10') landward of the wrack line, provided, however that hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions such as removal of sand castles or filling in of manmade holes on the beach. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of natural or other debris caused by extreme events, including, but not limited to, red tide, red algae bloom, or storm carried debris, are present. Should such excessive accumulation be determined, the town manager may approve raking consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

- (1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director or their designee, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.
- (2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.
- (3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the Town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt from their requirement to carry liability insurance.
- (4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by

the town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the town's raking regulations.

- (5) Prior to the granting or denying of the application, the director or their designee will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.
- (6) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.
- (7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.
- (8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in § 14-6(c).
- (9) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:
 - a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)). During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by town staff by an inspection of the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red

- lights or red filters shall be used to reduce disturbance to wildlife such as shorebirds.
- b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.
 - c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
 - d. Mechanical beach raking equipment shall meet the following standards:
 1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:
 - a- $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{footprint in square inches}}$
 - b- EXAMPLE: $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \div 198 \text{ square inches (ATV with } 6'' \times 8.25'' \text{ footprint } \times 4 \text{ tires)} = 3.1 \text{ PSI}$
 2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.
 3. The beach raking vehicle and equipment must be removed from the beach when not in use.
 4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.
 5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
 6. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.
 - e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.
 - f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.
 - g. Any violation of any special or standard permit conditions by a business owner, operator, or property owner may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of chapter 2) for any violation of the article. Permit revocations may be appealed to the town manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Sec. 14-7. Vehicular traffic on the beach.

It is unlawful and prohibited to operate any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or on sea turtle nesting habitat as defined in § 14-72, except for the following:

- (1) **Research or patrol vehicles**, only for authorized permittees of the FWC, DEP officials, law or code enforcement officers, EMS and firefighters, scientific monitoring, and town-approved service vehicles.
- (2) **Mechanical beach raking**. Vehicles operating under permits issued pursuant to § 14-6(c).
- (3) **Beach furniture and equipment transport**. Vehicles operating under permits issued pursuant to § 14-5(e).
- (4) **Jet-ski transport and storage**. Jet-ski transport and storage, when in accordance with § 27-49(1) and (9) even for jet-skis that are not available for rental in accordance with ch. 27.
- (5) **Wheelchairs**. A wheelchair, or other conveyance with prior approval from the town, for a person with a disability, which is actually being used by the person with a disability). Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.
- (6) **Maximum tire pressure**. Any vehicle authorized to drive on the beach cannot exceed a ground-to-tire pressure of 10 PSI as computed in accordance with § 14-4(c)(4)d.1, except for wheelchairs permitted in accordance with subsection (5) above.
- (7) **Sea turtle nesting season**. See § 14-78(b) for additional restrictions during the sea turtle nesting season.

Sec. 14-8. Dune systems.

Consistent with the town comprehensive plan objective 5-D for beaches and dunes, "Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes," the town adopts the following:

- (1) In areas where the beach has experienced erosion, on public land or with the consent of the owner, the town will establish a dune system consisting of sea oat plantings, a

minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.

- (2) In areas that have not experienced erosion, the town will encourage the establishment of a dune system but will not require same.

Sec. 14-9. Enforcement.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) When imposing a sentence or penalty, the court, special magistrate, or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special magistrate or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

**Sec. 14-10. Restoration standards for dune
vegetation alteration violations.**

Sec. 14-10. Restoration standards for dune vegetation alteration violations.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or special magistrate, a restoration plan shall be ordered using the standards in this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or special magistrate.

(b) The restoration plan shall include the following minimum standards:

- (1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock shall be one and two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If the density or species of the vegetation cannot be determined where the violation occurred, then an assumption shall be made that the density and the species were the same as on similar properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total size shall equal or exceed that specified in the above standards.
- (2) Dune vegetation alteration violations due to raking, excavation, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
- (3) Replacement plantings shall have a guaranteed minimum of 80 percent survivability for a period of no less than five years; however, success will be evaluated on an annual basis.
- (4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting.
- (5) The plan shall specify that within 90 days of completion of the restoration, a written report shall be submitted to the town. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.

- (6) The restoration plan shall include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:
 - a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.
 - b. Replacement of dead vegetation that was planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation shall be nursery grown and of the same species and at least the same size as those originally planted.
 - c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive exotic vegetation control measures taken, and any other factors which would indicate the functional health of the restored area.
 - d. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner shall constitute a violation of this ordinance.
 - e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director shall periodically inspect the restoration.

Sec. 14-11. Special events on the beach.

(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.

(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include but are not limited to: sporting

events (e.g. volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g. weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.

(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.

(d) Special events which occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle nesting habitat, may contain special conditions for the protection of the beach, dune, and sea turtles. These conditions are in addition to the basic requirements of Ordinance No. 98-1, as amended, which must still be met in full.

- (1) Along with the regular application for an event permit as required by Ordinance No. 98-1 as amended, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.
- (2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.
- (3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.
- (4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

- a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.
 - b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C. Rule 68-E* permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.
 - c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- (5) A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.
 - (6) The release of balloons is prohibited in accordance with 372.995, *F.S.*, except as permitted by that statute.

Secs. 14-12--14-70. Reserved.

**ARTICLE II.
SEA TURTLE CONSERVATION**

Sec. 14-71. Purpose and applicability.

The purpose of this article is to protect endangered and threatened sea turtles along the Gulf of Mexico beaches in the Town of Fort Myers Beach. This article protects nesting sea turtles and sea turtle hatchlings from the adverse effects of artificial lighting, provides overall improvement in nesting habitat degraded by light, and increases successful nesting activity and production of hatchlings on the beaches, as defined in this article.

Sec. 14-72. Definitions.

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

Artificial lighting means light emanating from a manmade point source (see *Point source of light*, below).

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Bug light means any yellow colored incandescent light bulb that is specifically treated in such a way so as to reduce the attraction of bugs to the light, but does not include bug killing devices.

Construction means the carrying out of any building, clearing, filling, excavating or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, the term “construction” refers to the act of constructing or the result of construction, and includes reconstruction or remodeling of existing buildings or structures.

Decorative lighting means lighting used for aesthetic reasons, primarily landscaping.

DEP means Florida Department of Environmental Protection or successor agency.

Directly illuminated means illuminated by one or more point sources of light directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Development has the same meaning stated in §34-2.

Dune means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach and deposited by any natural or artificial mechanism.

Existing development means completed development having received official approval in the form of a certificate of compliance, final building permit inspection, or other final governmental approval as of January 31, 1998, or development that was completed prior to the adoption of those requirements.

FWC means the Florida Fish & Wildlife Conservation Commission or its successor.

Ground-level barrier means any vegetation, natural feature or artificial structure rising from the ground intended to prevent beachfront lighting from shining directly or indirectly onto the beach, dune, or other sea turtle nesting habitat.

Hatchling means any individual of a species of sea turtle, within or outside of a nest, that has recently hatched from an egg.

Indirectly illuminated means illuminated by one or more point sources of light not directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Low-profile lighting means a light fixture which places the low wattage source of light no higher than 48 inches above grade and is designed so that a point source of light does not directly or indirectly illuminate sea turtle nesting habitat.

Mechanical beach raking means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing

ambient grade and results in no removal of in situ sand.

Nest means an area where sea turtle eggs have been naturally deposited or subsequently relocated by an FWC-authorized marine turtle permit holder.

Nesting season means from 9:00 P.M. until 7:00 A.M. during the period May 1 through October 31 of each year.

New development means construction of new buildings or structures as well as renovation or remodeling of existing development, and includes the alteration of exterior lighting occurring after January 31, 1998.

Point source of light means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium and low-pressure sodium light sources, as well as torches, camp and bonfires.

Sea turtle means any marine-dwelling reptile of the families Cheloniidae or Dermochelyidae found in Florida waters or using the beach as nesting habitat, including *Caretta caretta* (loggerhead), *Chelonia mydas* (green), *Dermochelys coriacea* (leatherback), *Eretmochelys imbricata* (hawksbill), and *Lepidochelys kemp*i (Kemp’s ridley). For purposes of this article, sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means the beach and any adjacent dunes or areas landward of the beach used by sea turtles to deposit sea turtle eggs.

Tinted glass means any glass treated to achieve an industry-approved, inside-to-outside light transmittance value of 45% or less.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-73. Enforcement.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) A rebuttable presumption that there is a violation of this article exists when:

- (1) a shadow is created or cast by artificial lighting directly or indirectly illuminating an opaque object in sea turtle nesting habitat during the nesting season; or
- (2) the disorientation or mortality of a nesting sea turtle or sea turtle hatchling is caused by artificial lighting directly or indirectly illuminating sea turtle nesting habitat during the nesting season.

Sec. 14-74. Exemptions.

The town manager may authorize, in writing, any activity or use of lighting otherwise prohibited by this article for a specified location and period of time. The authorization must be for the minimum duration and amount of lighting from a point source(s) of light.

Sec. 14-75. Existing development.

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by lighting originating from the existing development during the nesting season. Artificial lighting from existing development must not directly or indirectly illuminate sea turtle nesting habitat during the nesting season.

Sec. 14-76. New development.

New development must comply with the following requirements:

- (a) Artificial lighting must conform to the requirement of § 14-75.
- (b) A lighting plan must be submitted for review prior to the earlier of building permit or development order issuance for all new development, as follows:
 - (1) for new development seaward of the coastal construction control line, as defined in § 6-333 (CCCL), a copy of a DEP-approved lighting plan is required;
 - (2) for new development landward of the CCCL, a lighting plan is required for all commercial and industrial development, and for all multi-story developments in multi-family zoning districts.

The location, number, wattage, elevation, orientation, and all types of proposed exterior artificial light sources must be included on the lighting plan. An approved lighting plan is required

before final inspections for a certificate of occupancy or certificate of compliance will be performed by the town.

(c) Prior to the issuance of a certificate of occupancy (CO), the exterior lighting of new development must be inspected after dark by the town, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this article.

Sec. 14-77. Publicly owned lighting.

Streetlights and lighting at parks and other publicly owned beach access areas are subject to the following requirements:

- (1) The beach must not be directly or indirectly illuminated by newly installed or replaced point sources of light.
- (2) Artificial lighting at parks or other public beach access points must conform to the provisions of § 14-75.

Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.

(a) **Fires.** Fires that directly or indirectly illuminate sea turtle nesting habitat are prohibited during the nesting season.

(b) **Driving on the beach.** Driving on sea turtle nesting habitat, specifically including the beach, is prohibited during the nesting season, except as follows:

- (1) **Research or patrol vehicles.** Only authorized permittees of the FWC, DEP officials, and law or code enforcement officers conducting bona fide research or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season. No lights may be used on these vehicle during the nesting season unless they are covered by appropriate red-colored filters.

- (2) **Mechanical beach raking.** All mechanical beach raking requires a town permit in accordance with § 14-6(c). During the nesting season, mechanical beach raking:
 - a. must not occur before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first, and

- b. must not disturb any sea turtle or sea turtle nest and must avoid all staked sea turtle nests by a minimum of 10 feet.

(3) **Beach furniture and equipment transport.** The transport of beach furniture and equipment requires a town permit in accordance with § 14-5(e). During the nesting season:

- a. Equipment shall not be set out in the morning until after sea turtle monitoring has inspected the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked.
- b. Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.

(4) **Jet-ski transport.** During the nesting season, jet-ski transport and storage:

- a. must be in compliance with § 27-49(1) and (9) of this code even for jet-skis that are not available for rental in accordance with ch. 27, and
- b. may require a DEP permit authorizing jet-ski transport within the riparian line of the licensed property to the water, and
- c. must not occur before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first, and
- d. must not disturb any sea turtle or sea turtle nest and must avoid all staked sea turtle nest by a minimum of 10 feet.

(5) See §§ 14-5-7 and 27-49 for other restrictions on vehicular traffic on the beach that apply before and after the nesting season.

(c) **Parking.** Vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat.

Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.

- (a) Appropriate techniques to achieve lighting compliance include, but are not limited to:
 - (1) fitting lights with hoods or shields,
 - (2) utilizing recessed fixtures with low-wattage bulbs,
 - (3) screening light with vegetation or other ground-level barriers,

- (4) directing light away from sea turtle nesting habitat,
- (5) utilizing low-profile lighting,
- (6) turning off artificial light during the nesting season,
- (7) motion detectors set on the minimum duration, and
- (8) lowering the light intensity of the lamps, preferably to 25 watts, but no more than 40-watt yellow bug lights.

Although plastic sleeves for fluorescent bulbs may help to reduce the amount of artificial light to an acceptable level if the bulbs are of sufficiently low wattage, in most instances additional shielding is needed as sea turtles are more sensitive to the wavelengths of fluorescent light.

(b) Opaque shields for lights covering an arc of at least 180 degrees and extending an appropriate distance below the bottom edge of the fixture on its seaward side may be installed so that the light source or any reflective surface of the light fixture is not visible from sea turtle nesting habitat.

(c) Floodlights, uplights, spotlights, and decorative lighting directly or indirectly visible from sea turtle nesting habitat should not be used during the nesting season. The ideal alternatives within direct line-of-sight of the beach are completely shielded downlight-only fixtures or recessed fixtures, with any visible interior surfaces or baffles covered with a matt black non-reflective finish.

(d) Appropriate techniques to eliminate interior lighting directly or indirectly illuminating the beach, include but are not limited to: applying window tint film to windows, using tinted glass, moving light fixtures away from windows, closing blinds or curtains, and turning off unnecessary lights.

Secs. 14-80--14-110. Reserved.

ARTICLE III. SOUTHERN BALD EAGLE ³

Sec. 14-111. Purpose.

In order to protect and preserve the southern bald eagle, it is necessary and appropriate to protect, enhance, and preserve the nest of the eagle and its immediate environs. With reasonable land compensation incentives and proper habitat management, the southern bald eagle population can be maintained and increased. This article is intended to protect the critical nesting habitat of the southern bald eagle and promote national, state, and county pride and esteem by providing special compensation incentives to private property owners for loss of property committed to critical southern bald eagle nesting habitat. This article also provides information and assistance to property owners to enable them to avoid violations of state and federal law.

Sec. 14-112. 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:

Abandoned nest means a nest which has not been occupied by the southern bald eagle for the hatching and nurturing of eagle young for a period of four consecutive years or has been determined to be abandoned by the eagle technical advisory committee.

Buffer area means that area designated in accordance with § 14-119 that must remain predominantly in its natural state to protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance up to 750 feet or more from a nest and may be irregularly shaped areas.

Conservation easement means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; retaining such areas as

³ *Cross reference(s)--Protection of habitat, § 10-471 et seq.*

suitable habitat for fish, plants, or wildlife; or maintaining existing land uses and which prohibits or limits any or all of the activities described in F.S. § 704.06, as such provisions now exist or may from time to time be amended.

Critical eagle nesting habitat means habitat which, if lost, would result in the elimination of nesting eagles from the area in question. Critical eagle nesting habitat typically provides functions for the southern bald eagle during the nesting portion of that species' life cycle. This area includes eagle nest trees and their immediate environs and may include other areas or features such as perch trees, flyways, and secondary nests.

Developer means any person undertaking development.

Development means any improvement or change of the land induced by human activities.

FWC means the Florida Fish & Wildlife Conservation Commission or its successor.

Land means the earth, water and air above, below or on the surface.

Nest means a structural mass of sticks, twigs, leaves, mosses or other materials which is being occupied or has been occupied by the southern bald eagle for the hatching and nurturing of eagle young.

Parcel, for purposes of this article only, means one or more contiguous lots under unified control.

Property owner means any person having recorded legal title to real property.

Southern bald eagle (*Haliaeetus leucocephalus*) means a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout the state around estuarine areas and along the lakes and river drainage basins within the interior of the state and county.

Unified control means the unrestricted right of any owner or agent to enforce whatever conditions are placed on the use and development of a parcel of land through the provisions of this article, by binding his heirs, assigns, or other successors in title with covenants or restrictions on the development and subsequent use of property.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-113. Violation; penalty.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) Any violator of this article may be required to restore the critical eagle nesting habitat to its original undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the town may take necessary corrective action, the cost of which will be placed as a lien upon the property.

Sec. 14-114. Provisions supplemental.

(a) This article does not replace the Federal Endangered Species Act, the Federal Migratory Bird Act, the Federal Bald Eagle Act or the Florida Endangered Species Act, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat.

(b) The town urges all landowners conducting development activities to adhere to the "Habitat Management Guidelines for the Bald Eagle in the Southern Region," prepared by the U.S. Fish and Wildlife Service, which recommends a primary protection zone with a radius of 750 to 1500 feet around active nests within which no development should occur.

Sec. 14-115. Applicability.

This article applies to all real property within 750 feet of a nest until such time as the nest has been determined to be abandoned. Abandonment will be determined by the eagle technical advisory committee based on competent evidence but in no event will be more than four years.

Sec. 14-116. Eagle technical advisory committee.

(a) Lee County has established an eagle technical advisory committee (ETAC) for the purpose of advising the board of county commissioners on matters relating to the protection of the southern bald eagle. The Town of Fort Myers Beach shall consult this committee for advice and recommendations in the event a southern bald eagle begins to nest within its incorporated area.

Sec. 14-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.

(a) The town may acquire rights and interests in real property designated as a critical eagle nesting habitat. When a developer or property owner cannot accommodate critical eagle nesting habitat through reasonable site planning or proper access, the town may acquire an interest through:

- (1) Receiving donations of critical eagle nesting habitat lands;
- (2) Purchase or conveyance by dedication of a perpetual conservation easement;
- (3) Outright purchase or lease of critical eagle nesting habitat;
- (4) Acquisition through eminent domain proceedings pursuant to article II, § 9, and article X, § 6, of the state constitution and applicable provisions of the Florida Statutes; or
- (5) Implementation by the town council or the board of county commissioners of any combination of these or other actions to acquire rights and interests that balance the public and private interests.

(b) Monies needed for the purchase of critical eagle nesting habitat, or the purchase of conservation easements to protect these habitats, may be funded by public and private donations. Funding may also be solicited in a general community appeal on license tag renewals and ad valorem tax envelopes issued by the county tax collector, and by monies appropriated from the general fund by the town council or the board of county commissioners from time to time.

Sec. 14-118. Notification procedure.

The town will notify the FWC and the U.S. Fish and Wildlife Service upon receipt of any application for a planned development rezoning, a development order, a notice of clearing, or a building permit for any property located within 750 feet of a bald eagle nest. The notice must include any available information gathered by the eagle technical advisory committee regarding the behavior of the eagles who are occupying the nest.

Sec. 14-119. Mechanisms for the protection of critical eagle nesting habitat.

(a) *Single- or two-family dwelling unit (including accessory structures.)* Appropriate conditions

limiting or prohibiting development during the nesting season may be attached to building permit approvals for property to which this article is applicable where such conditions are deemed necessary by the director to prevent a “take” of the eagle, as that term is defined in FAC rule 39-1.004(77).

(b) ***All other development.***

- (1) All persons contemplating the development of property to which this article is applicable are encouraged to consult with the county’s eagle technical advisory committee and its supporting staff as early in the planning and design process as possible.
- (2) With assistance from the eagle technical advisory committee, all such persons are encouraged to prepare a management plan that protects critical eagle nesting habitat. All such management plans will be reviewed by the eagle technical advisory committee prior to approval by resolution of the town council.
- (3) All development within critical eagle nesting habitat and buffer areas must be consistent with the approved management plan.
- (4) Management plans must address, at a minimum, the following items:
 - a. Description of the land around the critical eagle nesting habitat, including locations of nest tree(s) and perch tree(s), vegetation types, and a description of the type and density of understory and canopy vegetation;
 - b. History and behavior patterns of the eagle pair;
 - c. A one inch equals 200 feet aerial map and a map at the scale of the development which shows the location of the eagle’s nest and other critical eagle nesting habitat features as well as the proposed development;
 - d. The size and shape of the buffer area;
 - e. Measures to reduce potential adverse impacts of the development on the nesting bald eagles;
 - f. A critical eagle nesting habitat management plan which shall include techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring;

- g. Deed restrictions, protective covenants, easements, or other legal mechanisms running with the land that provide reasonable assurances that the approved management plan will be implemented and followed by all subsequent owners of the property in question;
 - h. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.
- (5) The legal effect of management plans will be limited geographically to property owned or controlled by the proponent of the plan.
- (6) An approved management plan will remain effective notwithstanding the abandonment of a nest unless the abandonment occurs prior to the use of any incentives (see § 14-120 below) and the property owner relinquishes the incentives by amending the development order or taking other appropriate action.

Sec. 14-120. Compensation incentives for protection of critical eagle nesting habitat.

(a) Incentives for the preservation of critical eagle nesting habitat pursuant to approved management plans will be granted in accordance with the standards in § 10-474(e)

(b) In addition to the incentives already provided herein, if the town council elects not to acquire a critical eagle nesting habitat, then the town council may permit all or some of the following special compensation benefits as incentives to the developer or property owner for the purpose of protecting critical eagle nesting habitat:

- (1) For a buffer area of 350 feet in radius or an approximate equivalent acreage, minimum, the following benefits shall be granted:
 - a. The property owner shall be allowed to transfer density from within the buffer area to designated upland areas within the subject property at the same density permitted for that portion of the subject property as determined through the residential planned development process; and
 - b. The property owner shall be allowed priority review and processing of zoning and development applications for the

- subject property, and, if applicable, one other parcel under unified control.
- (2) For a buffer area of 550 feet in radius or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsection (1) of this section, may be granted:
 - a. The town may waive the zoning application fee on the subject property, and, if applicable, one other parcel under unified control;
 - b. The town may waive building permit application fees on the subject property, and, if applicable, one other parcel under unified control; and
 - c. The town may waive development review related fees on the subject property, and, if applicable, one other parcel under unified control.
- (3) For a buffer area of 750 feet in radius, or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsections (1) and (2) of this section, may be granted: The town may provide a credit against regional park impact fees on the subject property, and, if applicable, one other parcel under unified control located within the town. In no event shall the credit towards the regional park impact fee exceed the appraised value of the dedicated land.
- (4) In order to receive the benefits mentioned in this section, the buffer areas shall be designated as critical eagle nesting habitat and shall be conveyed to the town by either warranty deed or by dedication of a perpetual conservation easement.
- (5) The increase in buffer area beyond the minimum radius is directly proportional to additional incentive benefits which may be requested and may be received by the developer or property owner pursuant to the terms of this article.
- (6) In no event shall the amount of fees waived or credited set forth in subsections (2) and (3) of this section exceed the appraised value of the buffer area conveyed to the town. The appraised value shall be based on two current documented appraisals of the fair market value or sales price of the land. Appraisals must be prepared by qualified appraisers and are subject to approval by the town manager.

Secs. 14-121--14-290. Reserved.

**ARTICLE IV.
WETLANDS PROTECTION**

Sec. 14-291. Applicability.

(a) The provisions of this article apply to all wetlands within the incorporated area of the town. A close approximation of wetland boundaries is shown on the future land use map (Figure 16 of the Fort Myers Beach comprehensive plan). However, even where not shown on that map, this article applies to all wetlands as defined in F.S. § 373.019 as interpreted through the use of the unified delineation methodology ratified by F.S. § 373.4211.

(b) If the delineation of wetlands on the future land use map is incorrect due to a clear factual error, a process is contained in ch. 15 of the comprehensive plan to establish the precise boundary of any wetland within the town.

Sec. 14-292. Purpose.

(a) Wetlands provide valuable habitat, buffering from storms, shoreline stabilization, and production of food for estuarine and coastal waters. The town’s objectives are to preserve all remaining wetlands, protect them from further degradation, and improve their condition and natural functions.

Sec. 14-293. Definitions.

Director means the person to whom the town manager has delegated the authority to administer this article, or that person’s designee.

ERP means an Environmental Resource Permit.

SFWMD means the South Florida Water Management District.

Wetlands means those areas inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Examples of wetlands at Fort Myers Beach include mangroves forests, tidal marshes, and salt flats. See full definition in F.S. § 373.019.

Sec. 14-294. Prohibited activities.

Activities that destroy wetlands or impair the functioning of wetlands such as the following are prohibited:

- (1) Construction fill that encroaches along the edges of, or into, wetlands, canals, or other tidal waters;
- (2) Dredging of new or expanded boat basins or channels;
- (3) Placement of seawalls or riprap revetments except as specifically authorized by ch. 26;
- (4) Ditching or filling of wetlands for mosquito control purposes; and
- (5) Any filling or removal of mangrove systems.

Sec. 14-295. Permitted activities.

The following types of activities may be desirable in wetlands and may be permitted by the director when compatible with wetland functions and approved in accordance with other provisions of this code:

- (1) Activities necessary to prevent or eliminate a public hazard, such as elimination of a dangerous curve in a road, dredging in order to clean up a spill of hazardous waste, or removal of underwater obstructions to boat traffic.
- (2) Activities that provide a direct benefit to the public at large that would exceed any public loss as a result of the activity, such as removal of exotic species, restoration of natural hydroperiods, impacts associated with the maintenance of existing drainage works, or providing water access to the general public.
- (3) Resource-oriented activities such as passive recreation, outdoor education, or other uses where protection of wetland functions and values is the primary attraction.
- (4) Structures or facilities that will improve the functional value of wetlands or provide “no-impact” use for observation, education, research, or passage (walking or non-motorized boats); these could include such structures as public boardwalks, observation decks, or launching areas for non-motorized watercraft.

Sec. 14-296. Permits required.

(a) Prior to any activity that will affect wetlands, an ERP or exemption shall be required from either DEP or SFWMD in accordance with F.S. ch. 373 and F.A.C. ch. 62. The town will not undertake an independent review of the impacts to wetlands resulting from activity in wetlands that is specifically authorized by an ERP or exemption, provided that the proposed activity is consistent with the Fort Myers Beach comprehensive plan and this code.

(b) No development approval shall be issued by the town for any project that affects wetlands until all requisite permits from other agencies have been obtained and provided to the town. Relevant conditions placed on ERPs shall be incorporated into subsequent approvals issued by the town.

Sec. 14-297. Compliance enforcement.

(a) The town will enforce the provisions of any state authorization relating to wetlands, including ERPs, that are incorporated into a development order under ch. 10 or a building permit under ch. 6.

(b) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

Cross reference--See also article VI of this chapter concerning mangrove enforcement.

Secs. 14-298--14-370. Reserved.

**ARTICLE V.
TREE PROTECTION ⁴**

Sec. 14-371. Reserved.

Sec. 14-372. Findings of fact.

The town council hereby finds and determines that trees promote the health and general welfare of the citizens of the town, specifically:

- (1) Trees transpire considerable amounts of water each day and assist in purifying the air;
- (2) Trees precipitate dust and other particulate airborne pollutants from the air;
- (3) Trees, through their root systems, stabilize soil and play an important and effective part in soil conservation, erosion control, and flood control;
- (4) Trees are an invaluable amenity, providing shade and cooling the air and land, and reducing noise levels and glare;
- (5) The protection of trees is not only desirable, but essential to the health, safety, and welfare of all the citizens, present and future, of the town;
- (6) Some trees are more beneficial than others as necessary contributions to the town's environment, and it is not necessary to protect each and every tree in order to attain the publicly beneficial results of tree protection; and
- (7) Invasive exotic trees crowd out native trees and other vegetation and do not warrant protection under this article.

Sec. 14-373. Intent and purpose.

(a) The intent of this article is to protect trees through the preservation and planting of protected trees in order to:

- (1) aid in the stabilization of soil by the prevention of erosion and sedimentation;
- (2) reduce stormwater runoff and costs associated therewith and maintain permeable land areas for surface water filtration;

⁴ *Cross reference(s)--Open space, buffering and landscaping, § 10-411 et seq.*

- (3) aid in the removal of carbon dioxide and generation of oxygen in the atmosphere;
- (4) provide a buffer and screen against noise pollution;
- (5) promote energy conservation through the creation of shade, reducing heat gain in or on buildings or paved areas, and reducing the temperature of the microclimate through evapotranspiration;
- (6) provide protection against severe weather;
- (7) aid in the control of drainage and restoration of denuded soil subsequent to construction or grading;
- (8) provide a haven for birds which in turn assist in the control of insects;
- (9) protect and increase property values;
- (10) conserve and enhance the town's physical and aesthetic environment; and
- (11) generally protect and enhance the quality of life and the general welfare of the town.

(b) The purpose of this article is to protect trees from abuse and/or mutilation, and to regulate the removal and planting of protected trees in order to enhance and protect the environmental quality of the town.

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Diameter at breast height (dbh) means the diameter, in inches, of a tree measured 54 inches above natural grade.

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

Dripline means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

Indigenous vegetation means those plants which are characteristic of the major plant communities, as listed in § 10-413.

Invasive exotic tree means any of the following tree species: Melaleuca (*Melaleuca quinquenervia*), Brazilian pepper (*Schinus terebinthifolius*), and Australian pine (*Casuarina spp.*).

Person means any public or private individual, group, company, partnership, association, society or other combination of human beings whether legal or natural.

Protected tree means any tree listed in the protected tree list in § 14-380(c).

Protective barrier means a physical structure not less than three feet in height composed of lumber no less than one inch by one inch in size for shielding protected trees from the movement of equipment or the storage of equipment, material, debris or fill. Equivalent materials may be used to provide a protective barrier if first approved by the director.

Removal means the deliberate removal of a tree or causing the effective removal of a tree through damaging, poisoning or other direct or indirect actions resulting in the death of the tree.

Tree means a living, woody, self-supporting plant, ten feet or more in height, having one or more well-defined main stems or trunks, and any one stem or trunk four inches in diameter at breast height. Trees protected by this article are listed in § 14-380(c). For the purpose of this article, those palms listed in § 14-380(c) are declared to be a tree and are protected by the provisions of this article.

Tree location map means a drawing or aerial photograph which provides the following information: location of all trees protected under the provisions of this article, plotted by ground truthing or any other accurate scientific techniques; common or scientific name of all trees; and diameter at breast height. Groups of trees in close proximity (five feet spacing or closer) may be designated as a clump of trees, with the predominant species, estimated number and average size listed.

Upland means land other than wetlands.

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-375. Penalty for violation.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article. See also the restoration standards in § 14-384.

(b) In any prosecution under this article for the removal of a protected tree without a permit, each tree so removed will constitute a separate offense.

Sec. 14-376. Exemptions.

- (a) This article shall not apply to the following:
 - (1) **Trees in rights-of-way.** The removal of trees on public rights-of-way conducted by or on behalf of a governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.
 - (2) **Damaged trees.** The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an act of God and constitutes an immediate peril to life and property.
 - (3) **Utility lines.** The removal of trees by duly constituted communication, water, sewer or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.
 - (4) **Surveying activities.** The removal of trees protected by this article by a state-licensed land surveyor in the performance of his duties. The removal of trees protected by this article in a manner which requires clearing a swath of

greater than three feet in width shall require approval of the director prior to such a removal and clearance.

- (5) **Subdivided lots.** The removal of up to three protected trees during any one-year period on a lot that is being used lawfully as a single-family residence or mobile home. However, all other lots that are vacant or have a building that is being replaced are subject to the provisions of § 14-382(c).

(b) However, exemptions (1), (3), (4), and (5) in the previous subsection shall not apply to any tree cited in the Florida champion tree register (*Big Trees: The Florida Register*, published by the Florida Native Plant Society, or successor publication),

Sec. 14-377. Indigenous vegetation.

(a) Indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in ch. 10, article III, division 8. The following shall apply:

- (1) The director shall determine the location of protected species to be preserved based on the criteria set forth in ch. 10, article III, division 8. This review shall not be substituted for surveys required under ch. 10, article III, division 8.
- (2) The director, or the property owner with the director's approval, shall develop a management plan based on the criteria set forth in § 10-474. Preparation and review criteria for the plan may be subject to the provisions of an appropriate administrative code. Up to ten percent of the upland acreage shall be preserved in areas where listed species are present. No more than two separate areas shall be set aside on any given parcel. Any state-mandated upland listed species preserves shall be included within the referenced ten percent preservation area. Bald eagles (*Haliaeetus leucocephalus*) shall be protected pursuant to article III of this chapter.

(b) Indigenous vegetation shall not be cleared within 25 feet of the mean high-water line of any natural waterway. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to this code.

Sec. 14-378. Suspension of article during emergency conditions.

Upon the declaration of a state of emergency pursuant to F.S. ch. 252, the director may suspend the enforcement of the requirements of this article for a period of 30 days in order to expedite the removal of damaged and destroyed trees in the interest of public safety, health, and general welfare.

Sec. 14-379. Nonliability of town.

Nothing in this article shall be deemed to impose any liability upon the town or upon any of its officers or employees, nor to relieve the owner and/or occupant of any duty to keep trees and shrubs upon private property or under his control in a safe condition.

Sec. 14-380. List of protected trees.

(a) Any tree delineated in § 14-380(c) shall henceforth be a protected tree and shall thereby come under the provisions of this article, except where those trees are exempted from protection pursuant to § 14-376.

(b) All other species of trees not named in § 14-380(c) may be removed without a permit, but only in such a manner so as not to disturb or destroy surrounding protected trees or to disturb indigenous vegetation protected by § 14-377.

(c) *Protected tree list.*

FAMILY NAME

Scientific Name *Common Name*

ACERACEAE (MAPLE FAMILY)

Acer rubrum Red Maple

ANACARDIACEAE (CASHEW FAMILY)

Rhus copallina Southern Sumac

ANNONACEAE (CUSTARD-APPLE FAMILY)

Annona glabra Pond Apple

AQUIFOLOIACEAE (HOLLY FAMILY)

Ilex cassine Dahoon Holly

AREACACEAE (PALM FAMILY)

Coccothrinax argentata Silver Palm
 Cocos nucifera Coconut Palm
 Roystonea elata Florida Royal Palm
 Sabal palmetto Cabbage Palm

**AVICENNIACEAE
(BLACK MANGROVE FAMILY)**

Avicennia germinans Black Mangrove

BETULACEAE (BIRCH FAMILY)

Carpinus caroliniana Iron Wood

BORAGINACEAE (BORAGE FAMILY)

Cordia sebestena Geiger Tree

BURSERACEAE (TORCHWOOD FAMILY)

Bursera simaruba Gumbo Limbo

CAPPARACEAE (CAPER FAMILY)

Capparis cynophallophora Jamaica Caper

**COMBRETACEAE
(WHITE MANGROVE FAMILY)**

Bucida buceras Black Olive
 Conocarpus erecta Buttonwood
 Laguncularia racemosa White Mangrove

CORNACEAE (DOGWOOD FAMILY)

Cornus foemina Swamp Dogwood

CUPRESSACEAE (CYPRESS FAMILY)

Juniperus silicicola Southern Red Cedar

EBENACEAE (EBONY FAMILY)

Diospyros virginiana Persimmon

FABACEAE (PEA FAMILY)

Acacia farnesiana Sweet Acacia
 Lysiloma bahamensis Wild Tamarind
 Piscidia piscipula Jamaica Dogwood
 Pithecellobium unguis-cati Cat Claw

FAGACEAE (OAK FAMILY)

Quercus chapmani Chapman Oak
 Quercus incana Bluejack Oak
 Quercus laevis Turkey Oak
 Quercus laurifolia Laurel Oak
 Quercus myrtifolia Myrtle Oak
 Quercus nigra Water Oak
 Quercus virginiana Live Oak
 Quercus virginiana Sand Live Oak
 geminata

HAMAMELIDACEAE	
(WITCH-HAZEL FAMILY)	
Liquidambar styraciflua	Sweet Gum

JUGLANDACEAE	
(WALNUT AND HICKORY FAMILY)	
Carya aquatica	Water Hickory
Carya glabra	Pignut Hickory

LAURACEAE (LAUREL FAMILY)	
Persea borbonia	Red Bay
Persea palustris	Swamp Bay

MAGNOLIACEAE (MAGNOLIA FAMILY)	
Magnolia grandiflora	Southern Magnolia
Magnolia virginiana	Sweetbay

MELIACEAE FAMILY	
(MAHOGANY FAMILY)	
Swietenia mahogoni	West Indian Mahogany

MORACEAE (MULBERRY FAMILY)	
Ficus aurea	Strangler Fig
Ficus citrifolia	Short-leaf Fig
Morus rubra	Red Mulberry

MYRTACEAE (MYRTLE FAMILY)	
Eugenia axillaris	White Snapper
Eugenia confusa	Ironwood
Eugenia rhombea	Red Stopper
Eugenia myrtoides	Spanish Stopper
Myrcianthes fragans	Simpson Stopper

NYSSACEAE (SOUR GUM FAMILY)	
Nyssa sylvatica	Black Gum/ Black Tupelo

OLACACEAE (XIMENIA FAMILY)	
Ximenia americana	Tallowood

OLEACEAE (OLIVE FAMILY)	
Forestiera segregata	Florida Privet
Fraxinus caroliniana	Pop Ash

PINACEAE (PINE FAMILY)	
Pinus elliottii var. densa	South Florida Slash Pine
Pinus palustris	Long-leaf Pine

PLATANACEAE (SYCAMORE FAMILY)	
Platanus occidentalis	Sycamore

POLYGONACEAE (BUCKWHEAT FAMILY)	
Coccoloba diversifolia	Pigeon Plum
Coccoloba uvifera	Sea Grape

RHIZOPHORACEAE	
(RED MANGROVE FAMILY)	
Rhizophora mangle	Red Mangrove

ROSACEAE (ROSE FAMILY)	
Prunus caroliniana	Cherry Laurel

RUTACEAE (RUE FAMILY)	
Zanthoxylum clavaherculis	Hercules Club

SALICACEAE (WILLOW FAMILY)	
Salix caroliniana	Coastal-Plain Willow

SAPOTACEAE (SAPODILLA FAMILY)	
Bumelia celastrina	Buckthorn/ Saffron Plum
Bumelia tenax	Buckthorn/ Tough Bumelia
Chrysophyllum oliviforme	Satinleaf
Mastichodendron foetidissimum	Mastic

SIMAROUBACEAE (QUASSIA FAMILY)	
Simarouba glauca	Paradise Tree

TAXODIACEAE (BALD CYPRESS FAMILY)	
Taxodium ascendens	Pond Cypress
Taxodium distichum	Bald Cypress

THEACEAE (CAMELIA FAMILY)	
Gordonia lasianthus	Loblolly Bay

THEOPHRASTACEAE (JOEWOOD FAMILY)	
Jacquinia keyensis	Joewood

ULMACEAE (ELM FAMILY)	
Celtis laevigata	Hackberry
Ulmus americana	American Elm

Sec. 14-381. Unlawful injury of trees.

It shall be a violation of this article for any person to remove, injure, disfigure, or destroy a protected tree in preparation for, in connection with, or in anticipation of development of land, except in accordance with the provisions of this article.

Sec. 14-382. Removal of protected trees.

(a) **Permit required.** Any protected tree, as defined and protected by this article, may be lawfully removed only after a permit therefor has been secured from the director. Failure to comply with the requirements of a tree removal permit shall be a violation of this article.

(b) **Relocation to public property.** Where a protected tree is to be removed under the provisions of this article, the town may, with the owner's permission, relocate the tree (not being relocated within the property) at the town's expense to publicly owned property for replanting, either for permanent utilization at a new location or for future use at another location. If the town does not elect to relocate any such tree, it may give the county or any city within the county the ability to acquire such tree at its expense for relocation. The relocation shall be accomplished within 15 working days of the issuance of a permit, unless it is necessary to root prune the tree to ensure its survival, in which case the relocation shall be accomplished within 30 working days of the issuance of a permit or on another suitable schedule as agreed to by all parties.

(c) **Subdivided lots.** For individual lots that are vacant or have a building that is being replaced, tree permits will be incorporated into the building permit for the site. For clearing prior to building permit issuance, a separate tree removal permit application must be submitted. Review of the proposed removal will follow the criteria listed in § 14-412(d), and will also assess the existing understory or subcanopy plants and protected species for retention or relocation within the site. However, no permit is required for the removal of up to three protected trees during any one-year period on a lot that is being used lawfully as a single-family residence or mobile home.

Sec. 14-383. Tree protection during development of land.

(a) Prior to the land clearing stage of development, the owner or developer shall clearly mark all protected trees for which a tree removal permit has not been issued and shall erect protective barriers for the protection of the trees according to the following:

- (1) Around an area at or greater than a six-foot radius of all species of mangroves and protected cabbage palms;

- (2) Around an area at or greater than the full dripline of all protected native pines; and
- (3) Around an area at or greater than two-thirds of the dripline of all other protected species.

(b) No person shall attach any sign, notice or other object to any protected tree or fasten any wires, cables, nails, or screws to any protected tree in any manner that could prove harmful to the protected tree, except as necessary in conjunction with activities in the public interest.

(c) During the construction stage of development, the owner or developer shall not cause or permit the cleaning of equipment or material within the outside perimeter of the crown (dripline) or on the nearby ground of any protected tree or group of trees which is to be preserved. Within the outside perimeter of the crown (dripline) of any protected tree or on nearby ground, the owner or developer shall not cause or permit storage of building material and/or equipment, or disposal of waste material such as paints, oil, solvents, asphalt, concrete, mortar, or any other material harmful to the life of the tree.

(d) No person shall permit any unnecessary fire or burning within 30 feet of the dripline of a protected tree.

(e) Any landscaping activities within the protective barrier area shall be accomplished with hand labor.

(f) Prior to the director issuing a certificate of occupancy or compliance for any development, building, or structure, all protected trees designated to be preserved that were destroyed during construction shall be replaced by trees of equivalent diameter at breast height tree caliper and of the same species as specified by the director, before occupancy or use, unless approval for their removal has been granted under permit.

(g) The director may conduct periodic inspections of the site during land clearance and construction.

(h) If, in the opinion of the director, development activities will so severely stress slash pines or any other protected tree such that they are made susceptible to insect attack, preventative spraying of these trees may be required.

Sec. 14-384. Restoration standards.

(a) If a violation of this article has occurred and upon agreement of the director and the violator, or, if they cannot agree, then upon conviction by the court or order of the hearing examiner, a restoration plan shall be ordered in accordance with the following standards:

- (1) The restoration plan shall include the following minimum planting standards:
 - a. The plan shall include a planting plan for all protected trees. Replacement stock shall be computed on a three for one basis according to the total number of unlawfully removed trees. The phrase “three for one” in this section refers to the requirement of replacing an illegally removed tree with three live trees according to the provisions of this article. Replacement trees shall be nursery grown, containerized, and no less than six feet in height. It shall be within the discretion of the director to allow a deviation from the ratio specified in this subsection. When such deviation is sought, the total of heights and calipers shall equal or exceed that specified in the standards set out in this subsection. An example of this might be one in which trees four feet in height might be planted in a ratio of five replacement trees to one illegally removed tree. Justification for such a deviation shall be provided to the director.
 - b. The plan shall include a planting plan for understory vegetation. Understory vegetation shall be restored to the area from which protected trees were unlawfully removed or mutilated. The plant selection shall be based on that characteristic of the Florida Land Use, Cover and Classification System (FLUCCS) Code. Shrubs, ground cover and grasses shall be restored as delineated in the Florida Land Use, Cover and Classification System Code. Up to seven species shall be utilized with relative proportions characteristic of those in the Florida Land Use, Cover and Classification System Code. The exact number and type of species required shall also be based upon the existing indigenous vegetation on adjacent

property. Replacement stock shall be no less than one-gallon-sized nursery-grown containerized stock planted at no less than three feet on center in the area from which protected trees were unlawfully removed or mutilated. This area shall be defined by the dripline of the trees. The number of shrubs shall not exceed, but may be less than, 25 shrubs per tree unlawfully removed or mutilated. The understory of the restored site shall be protected for a period of no less than ten years, unless its removal is a provision of a development order which has been approved after the restoration of the site.

- c. If the unlawful removal or mutilation of trees has caused any change in hydrology or surface water flows, then the hydrology or surface water flows shall be restored to pre-violation condition.
- (2) Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court or the hearing examiner, as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida No. 1 or better grade. Replacement stock shall have a guaranteed 80 percent survivability for a period of no less than five years. A maintenance provision of no less than five years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings. The director may at his/her discretion allow the replacement stock to be planted off-site where approved development displaces areas to be restored. In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the director.
- (3) In the event of impending development on property wherein protected trees were unlawfully removed, the restoration plan shall indicate the location of the replacement stock consistent with any approved plans for subsequent development. For the purposes of this article, impending development shall mean that a developer has made application

for a development order or applied for a building permit.

- (4) If identification of the species of trees is impossible for any reason on property wherein protected trees were unlawfully removed, then a presumption is raised that the trees illegally removed were of a similar species and mix as those found on adjacent properties.
- (5) A monitoring report shall be submitted to the director on an annual basis for five years describing the conditions of the restored site. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Mortality estimates per species planted, estimated causes for mortality, growth of the vegetation, and other factors which would indicate the functional health of the restored systems shall be included in the monitoring report. Failure to submit the report in a timely manner shall constitute a violation of this article. When mitigation is required pursuant to this article, monitoring reports are necessary to ensure that the mitigation efforts have been successful. In order to verify the success of the mitigation efforts and the accuracy of the monitoring reports, periodic inspections are necessary. In order that the town be compensated by the violator for the costs of these periodic inspections of the restored site, a schedule of inspection fees may be established by the town; if no such schedule exists, inspection fees shall be those charged for similar services by Lee County.

(b) If a violation of § 14-384 occurs, then the restoration provisions contained within § 14-384 shall govern and supersede any other restoration provisions contained within this article.

Secs. 14-385--14-410. Reserved.

Sec. 14-411. Permit required.

No person, organization, society, association, corporation, or any agent or representative thereof, shall deliberately cut down, destroy, remove, relocate, defoliate through the use of chemicals or other methods, or otherwise damage any tree that is protected under this article without first obtaining a permit as provided in this article.

Sec. 14-412. Issuance of permit.

(a) **Submission of application.** Application for a permit to remove any protected tree defined in this article shall be submitted to the director, in writing, on a form provided by the director, accompanied by a written statement indicating the reasons for removal.

(b) **Authority of director.** The director shall have the authority to issue the permit and to inspect all work performed under any permit issued under this article.

(c) **Required information.** All applications to remove any protected tree defined in this article shall be on forms provided by the director. Where an application has been submitted to the director for the removal of more than five protected trees, no tree removal permit shall be issued by the director until a site plan for the lot or parcel has been reviewed and approved by the director, which shall include the following minimum information:

- (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
- (2) A tree location map for the lot or parcel, in a form acceptable to the director. For the removal of three protected trees or less, an on-site examination by the director's designee shall be made in lieu of the tree location map requirement.
- (3) Any proposed grade changes that might adversely affect or endanger any protected trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
- (4) Any proposed tree replacement plan.

(d) **Criteria for granting.** The director shall approve a permit for issuance for the removal of any protected tree if the director finds one or more of the following conditions is present:

- (1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
- (2) Trees which pose a safety hazard to existing buildings or structures.
- (3) Trees which, if not removed, would preclude vehicular access to a lot or parcel.

- (4) Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
- (5) Trees so weakened by age, storm, fire, or other injury as to, in the opinion of the director, jeopardize the life and limb of persons or cause a hazard to property.
- (6) Trees which, if not removed, would allow a landowner no beneficial use of a lot or parcel or would place an inordinate burden on the landowner.

The director may require that a tree protected by this article be relocated on the same lot or parcel in lieu of removal. Permitting decisions of the director may be appealed through the procedure set forth in § 34-86.

(e) **Submission of site plan when building permit not required.** Where a building permit issuance is not required because no structures are ready to be constructed and no other development of the lot is about to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the director meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the director.

(f) **Inspection of site.** The director may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of the protected trees will have upon the natural resources of the affected area prior to the granting or denying of the application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established must be paid to the director. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.

(g) **Approval or denial.** Based upon the information contained in the application and after investigation of the application, the director shall approve or deny the application, and, if approved, the director is the party so designated by the town to issue the permit for a period not to exceed one year and to collect the permit fee.

(h) **Conditions.** The director may attach conditions to the permit relating to the method of identifying, designating, and protecting those trees which are not

to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees permitted to be removed with trees of the same size, compatible species and same number.

Secs. 14-413--14-450. Reserved.

**ARTICLE VI.
MANGROVE ENFORCEMENT ⁵**

Sec. 14-451. Purpose and intent.

The purpose of this article is to establish enforcement procedures and restoration standards for violations of the state department of environmental protection mangrove protection rules, to supplement and enhance department of environmental protection enforcement mechanisms. The intent of this article is to discourage the illegal alteration of mangrove trees by improving enforcement of department of environmental protection mangrove protection regulations and to ensure that adequate restoration is provided. It is not the intent of this article to diminish any mangrove protection requirements set forth in ch. 26, article II and articles IV and V of this chapter.

Sec. 14-452. Definitions.

(a) 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:

Development means any improvement to land including but not limited to building construction; road and driveway construction or widening; utility installation; dock and shoreline activities; and the installation of swimming pools, irrigation systems, fences, or other accessory structures.

⁵ *Cross reference(s)--Marine facilities and structures, ch. 26.*

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

Invasive exotic vegetation means Australian pine (*Casuarina* spp.), Brazilian pepper (*Schinus terebinthifolius*), and paper or punk tree (*Melaleuca quinquenervia*).

Mangrove shall have the same meaning as provided by the *Florida Administrative Code*.

Mangrove alteration shall have the same meaning as provided by the *Florida Administrative Code*.

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-453. Enforcement.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

(b) When imposing a sentence or penalty, the court, hearing examiner, or any other appropriate body may, in mitigation, consider the successful replacement of mangroves illegally removed, and the restoration of the subject area when deemed by the court, the hearing examiner, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the mangrove system to recover or perform those functions for which it is being protected.

(c) In any enforcement action under this article, each mangrove, so altered, will constitute a separate violation.

Sec. 14-454. Restoration standards.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon conviction by the court or order of the hearing examiner, a restoration plan shall be ordered pursuant to the standards contained in subsection (b) of this section. Such a restoration plan shall set forth

replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or hearing examiner.

(b) The restoration plan shall include the following minimum planting standards:

- (1) For each mangrove altered in violation of this article, three replacement mangroves shall be planted. If the number of altered mangroves cannot be determined, then the required number of replacement stock shall be computed according to the total area wherein all mangroves were unlawfully altered. The replacement stock shall be container grown mangroves no less than one year old and 24 inches in height. Replacement mangroves shall be planted at a minimum density of three feet on center. Higher density plantings may be required at the discretion of the director based upon density and diameter of the mangroves on the site prior to the violation. If the density of mangroves cannot be determined where the violation occurred, then an assumption shall be made that the density was the same as on adjacent properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total of heights and diameter shall equal or exceed that specified in the above standards.
- (2) Mangrove alteration violations due to filling, excavation, drainage, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
- (3) Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings.
- (4) In the event that the species of mangrove cannot be identified on property wherein mangroves were altered in violation of this article, then a presumption shall be made that the mangroves illegally altered were of a similar species and distribution as those found on adjacent properties.
- (5) Replacement plantings shall have a minimum of 80 percent survival at the end of five years, however, success will be evaluated on an annual basis.
- (6) The restoration plan shall include a maintenance provision of no less than five

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- years for the control of invasive exotic vegetation.
- (7) Within 90 days of completion of the restoration, a written report shall be submitted to the county. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.
- (c) Annual monitoring and maintenance of the restored area shall include the following:
- (1) Removal of all exotic and nuisance vegetation in the area without disturbing the existing wetland vegetation.
 - (2) Replacement of dead mangroves that were planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement mangroves shall be nursery grown and of the same species and at least the same height as those originally planted.
 - (3) Submittal of a monitoring report to the director on an annual basis for five years following the completion of the restoration describing the conditions of the mitigated site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive, exotic vegetation control measures taken, and any other factors which would indicate the functional health of the planted mangroves. Failure to submit the report in a timely manner shall constitute a violation of this article.

Sec. 14-455. Permit required.

No person, or any agent or representative thereof, directly or indirectly, shall alter any mangrove tree located in the incorporated area, without first obtaining a permit, where applicable, from the state department of environmental protection in accordance with the requirements of ch. 17-321, Florida Administrative Code.

Sec. 14-456. Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the most restrictive requirements shall apply.