

ORDINANCE 02-01

AN ORDINANCE AMENDING CHAPTERS 1, 2, 6, 14, 22, AND 26 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; REPEALING CHAPTERS 1, 14, 22, AND 26 OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; REPEALING APPENDICES A, B, C, D, E, F, G, I, J, AND K OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; REPEALING ORDINANCE 00-10, BEACH AND DUNE ORDINANCE; **ADOPTING A NEW CHAPTER 1 OF THE LAND DEVELOPMENT CODE WHICH PROVIDES SEC. 1-1 DESIGNATION AND CITATION OF LAND DEVELOPMENT CODE, SEC. 1-2 RULES OF CONSTRUCTION AND DEFINITIONS, SEC. 1-3 CATCHLINES OF SECTIONS, HISTORY NOTES, CROSS REFERENCE, STATE LAW REFERENCES, REFERENCES TO CHAPTERS, SECTIONS OR ARTICLES, SEC. 1-4 EFFECT OF REPEAL OF ORDINANCES, SEC. 1-5 GENERAL PENALTY, CONTINUING VIOLATIONS, SEC. 1-6 ENFORCEMENT OF LAND DEVELOPMENT CODE, SEC. 1-7 SEVERABILITY OF PARTS OF LAND DEVELOPMENT CODE, SEC. 1-8 PROVISIONS CONSIDERED CONTINUATION OF EXISTING ORDINANCES, SEC. 1-9 EFFECT OF LAND DEVELOPMENT CODE ON PRIOR OFFENSES, PENALTIES AND RIGHTS, SEC. 1-10 ORDINANCES NOT AFFECTED BY LAND DEVELOPMENT CODE, SEC. 1-11 FORT MYERS BEACH COMPREHENSIVE PLAN, SEC. 1-12 EDITOR'S NOTES, SEC. 1-13 AMENDMENTS TO LAND DEVELOPMENT CODE, SEC. 1-14 SUPPLEMENTATION OF LAND DEVELOPMENT CODE; **AMENDING CHAPTER 2 OF THE LAND DEVELOPMENT CODE** WHICH PROVIDES SEC. 2-303 INTENT AND PURPOSE OF ARTICLE, SEC. 2-304 DEFINITIONS AND RULES OF CONSTRUCTION, SEC. 2-306 COMPUTATION OF AMOUNT, SEC. 2-307 PAYMENT, SEC. 2-309 TRUST ACCOUNTS, SEC. 2-310 USE OF FUNDS, SEC. 2-311 REFUND OF FEES PAID, SEC. 2-312 EXEMPTIONS, SEC. 2-313 CREDITS, SEC. 2-315 ENFORCEMENT OF ARTICLE, PENALTY, FURNISHING FALSE INFORMATION; **AMENDING CHAPTER 6 OF THE LAND DEVELOPMENT CODE** WHICH CHANGES SEC. 6-405 DEFINITIONS, SEC. 6-406 PENALTY FOR VIOLATION OF ARTICLE, SEC. 6-444 VARIANCES, SEC. 6-472 SPECIFIC STANDARDS, SEC. 6-473 REPEATED DAMAGE BY FLOODING; **ADOPTING A NEW CHAPTER 14 OF THE LAND DEVELOPMENT CODE** WHICH PROVIDES **Article I Beach and Dune Management**, SEC. 14-1 DEFINITIONS, SEC. 14-2 PURPOSE AND INTENT, SEC. 14-3 DESTRUCTION OR DIMINISHMENT OF DUNE OR BEACH SYSTEM, SEC. 14-4 TRASH AND LITTER ON THE BEACH, SEC. 14-5 BEACH FURNITURE AND EQUIPMENT, SEC. 14-6 BEACH RAKING AND WRACK LINE POLICY, SEC. 14-7 VEHICULAR TRAFFIC ON THE BEACH, SEC. 14-8 DUNE SYSTEMS, SEC. 14-9 ENFORCEMENT, SEC. 14-10 RESTORATION STANDARDS FOR DUNE VEGETATION ALTERATION VIOLATIONS, SEC. 14-11 SPECIAL EVENTS ON THE BEACH, **Article II Sea Turtle Conservation**, SEC. 14-71 PURPOSE AND APPLICABILITY, SEC. 14-72 DEFINITIONS, SEC. 14-73 ENFORCEMENT, PENALTY, SEC. 14-74 EXEMPTIONS, SEC. 14-75 EXISTING DEVELOPMENT, SEC. 14-76 NEW DEVELOPMENT, SEC. 14-77 PUBLICLY OWNED LIGHTING, SEC. 14-78**

ADDITIONAL REGULATIONS AFFECTING SEA TURTLE NESTING HABITAT, SEC. 14-79 GUIDELINES FOR MITIGATION AND ABATEMENT OF PROHIBITED ARTIFICIAL LIGHTING, **Article III Southern Bald Eagle Protection**, SEC. 14-111 PURPOSE, SEC. 14-112 DEFINITIONS, SEC. 14-113 VIOLATION & PENALTY, SEC. 14-114 PROVISIONS SUPPLEMENTAL, SEC. 14-115 APPLICABILITY, SEC. 14-116 EAGLE TECHNICAL ADVISORY COMMITTEE, SEC. 14-117 PUBLIC ACQUISITION OF RIGHTS AND INTEREST IN CRITICAL EAGLE NESTING HABITAT LANDS, SEC. 14-118 NOTIFICATION PROCEDURE, SEC. 14-119 MECHANISMS FOR THE PROTECTION OF CRITICAL EAGLE NESTING HABITAT, SEC. 14-120 COMPENSATION INCENTIVES FOR PROTECTION OF CRITICAL EAGLE NESTING HABITAT, **Article IV Wetlands Protection**, SEC. 14-291 APPLICABILITY, SEC. 14-292 PURPOSE, SEC. 14-293 DEFINITIONS, SEC. 14-294 PROHIBITED ACTIVITIES, SEC. 14-295 PERMITTED ACTIVITIES, SEC. 14-296 PERMITS REQUIRED, SEC. 14-297 COMPLIANCE ENFORCEMENT, **Article V Tree Protection**, SEC. 14-372 FINDINGS OF FACT, SEC. 14-373 INTENT AND PURPOSE, SEC. 14-374 DEFINITIONS, SEC. 14-375 PENALTY FOR VIOLATION, SEC. 14-376 EXEMPTIONS, SEC. 14-377 INDIGENOUS VEGETATION, SEC. 14-378 SUSPENSION OF ARTICLE DURING EMERGENCY CONDITIONS, SEC. 14-379 NONLIABILITY OF TOWN, SEC. 14-380 LIST OF PROTECTED TREES, SEC. 14-381 UNLAWFUL INJURY OF TREES, SEC. 14-382 REMOVAL OF PROTECTED TREES, SEC. 14-383 TREE PROTECTION DURING DEVELOPMENT OF LAND, SEC. 14-384 RESTORATION STANDARDS, SEC. 14-411 PERMIT REQUIRED, SEC. 14-412 ISSUANCE OF PERMIT, **Article VI Mangrove Enforcement**, SEC. 14-451 PURPOSE AND INTENT, SEC. 14-452 DEFINITIONS, SEC. 14-453 ENFORCEMENT, SEC. 14-454 RESTORATION STANDARDS, SEC. 14-455 PERMIT REQUIRED, SEC. 14-456 CONFLICTING PROVISIONS; **ADOPTING A NEW CHAPTER 22 OF THE LAND DEVELOPMENT CODE WHICH PROVIDES Article I In General**, SEC. 22-1 PURPOSE, SEC. 22-2 APPLICABILITY, SEC. 22-3 DEFINITIONS, SEC. 22-4 PENALTY, **Article II Administration And Enforcement, Division 1 Generally**, SEC. 22-42 APPEALS, **Division 2 Historic Preservation Board**, SEC. 22-71 GENERAL AUTHORITY, SEC. 22-74 POWERS AND DUTIES, **Division 3 Certificate Of Appropriateness**, SEC. 22-101 REQUIRED, SEC. 22-102 REGULAR CERTIFICATE OF APPROPRIATENESS, SEC. 22-103 SPECIAL CERTIFICATE OF APPROPRIATENESS, SEC. 22-104 DEMOLITION, SEC. 22-105 MOVING PERMITS, **Division 4 Archaeological Sites**, SEC. 22-106 ARCHAEOLOGICAL SITES, **Article III. Designation Of Historic Resources And Districts, Division 2 Incentives**, SEC. 22-171 FINANCIAL ASSISTANCE, SEC. 22-172 NOMINATION TO NATIONAL REGISTER OF HISTORIC PLACES, SEC. 22-173 RELIEF FROM BUILDING REGULATIONS, SEC. 22-174 RELIEF FROM ZONING AND DEVELOPMENT REGULATIONS, SEC. 22-175 VARIANCES FROM FLOODPLAIN REGULATIONS, **Division 3 Designation Procedure**, SEC. 22-201 INITIATION OF DESIGNATION PROCESS, SEC. 22-202 DESIGNATION REPORT, SEC. 22-203 REQUIRED NOTICES & ACTION BY HISTORIC PRESERVATION BOARD, SEC. 22-204 CRITERIA FOR DESIGNATION, SEC. 22-205 AMENDMENT OR WITHDRAWAL OF DESIGNATION, **Article IV Maintenance And Repair Of Premises**, SEC. 22-241 ORDINARY MAINTENANCE AND REPAIR, SEC. 22-242

CORRECTION OF DEFICIENCIES GENERALLY, SEC. 22-243 UNSAFE STRUCTURES, SEC. 22-244 EMERGENCY WORK, SEC. 22-245 DEMOLITION BY NEGLIGENCE; **ADOPTING A NEW CHAPTER 26 OF THE LAND DEVELOPMENT CODE WHICH PROVIDES Article I In General**, SEC. 26-1 ENFORCEMENT AND PENALTIES, **Article II Docks And Other Shoreline Structures, Division 1 Generally**, SEC. 26-41 DEFINITIONS, SEC. 26-43 APPLICABILITY, SEC. 26-44 COMPLIANCE WITH OTHER APPLICABLE REGULATIONS, SEC. 26-45 PERMITS REQUIRED, SEC. 26-46 VARIANCES, SEC. 26-47 EXEMPTION FROM SETBACK REQUIREMENT, SEC. 26-48 NONCONFORMING MARINE STRUCTURES, **Division 2. Location And Design**, SEC. 26-71 DOCKS AND BOAT RAMPS, SEC. 26-72 DOCK BOXES, SEC. 26-73 FISHING PIERS OR OBSERVATION DECKS, SEC. 26-74 BOATHOUSES, SEC. 26-75 SEAWALLS AND RETAINING WALLS GENERALLY, SEC. 26-76 SEAWALLS AND RETAINING WALLS ALONG ARTIFICIAL WATER BODIES, SEC. 26-77 SEAWALLS AND RETAINING WALLS ALONG NATURAL WATER BODIES, SEC. 26-78 RIPRAP REVETMENT, SEC. 26-79 PROTECTION OF VEGETATION DURING CONSTRUCTION, SEC. 26-80 TURBIDITY, SEC. 26-81 MARINA DESIGN AND LOCATION, SEC. 26-82 DREDGING, NEW AND MAINTENANCE, **Article III. Marine Sanitation**, SEC. 26-111 PURPOSE, SEC. 26-114 APPLICABILITY, SEC. 26-115 DISCHARGE OF WASTE MATERIAL PROHIBITED, SEC. 26-116 MARINA SANITATION FACILITIES; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. REPEAL OF CHAPTERS 1, 14, 22, AND 26 OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS. By the authority of Section 15.08 (c) of the Town Charter, Chapters 1, 14, 22, AND 26 of the transitional land development regulations are repealed. Transitional Chapter 1 is entitled GENERAL PROVISIONS. Transitional Chapter 14 is entitled ENVIRONMENT AND NATURAL RESOURCES and contains the following articles: Article II Wildlife and Habitat Protection, Article III Wellfield Protection, Article IV Wetlands Protection, Article V Tree Protection, and Article VI Mangrove Protection. Transitional Chapter 22 is entitled HISTORIC PRESERVATION and contains the following articles: Article I In General, Article II Administration and Enforcement, Article III Designation of Historic Districts and Resources, and Article IV Maintenance and Repair of Premises. Transitional Chapter 26 is entitled MARINE FACILITIES, STRUCTURES AND EQUIPMENT and contains the following articles: Article II Seawalls, Bulkheads, Docks and Similar Structures, and Article III Marine Sanitation.

SECTION 3. REPEAL OF APPENDICES A, B, C, D, E, F, G, I, J, and K OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS. By the authority of Section 15.08 (c) of the Town Charter, APPENDICES A, B, C, D, E, F, G, I, J, and K of the transitional land development regulations are repealed. Transitional Appendix A is entitled RECOMMENDED

NATIVE PLANTS FOR LANDSCAPE USE WITHIN THE SIX MILE CYPRESS. Transitional Appendix B is entitled GULF OF MEXICO BEACH DESCRIPTION. Transitional Appendix C is entitled SOIL TYPES. Transitional Appendix D is entitled WETLANDS VEGETATION LIST. Transitional Appendix E is entitled PROTECTED TREE LIST. Transitional Appendix F is entitled PROPOSED GROUNDWATER LAND USE CATEGORIES. Transitional Appendix G is entitled ACTIVITIES SUBJECT TO STATE MANGROVE ALTERATION GUIDELINES. Transitional Appendix I is entitled RESERVED. Transitional Appendix J is entitled DESCRIPTION OF HARLEM HEIGHTS, CHARLESTON PARK AND THE DUNBAR ENTERPRISE ZONE. Transitional Appendix K is entitled ROAD AND COMMUNITY PARK IMPACT FEE BENEFIT DISTRICT DESCRIPTIONS.

SECTION 4. REPEAL OF ORDINANCE 00-10, BEACH AND DUNE ORDINANCE. By the authority of Article 10 of the Town Charter, Fort Myers Beach Ordinance No. 00-10, the beach and dune management ordinance, is repealed. Pursuant to Section 8 below, the terms of Ordinance 00-10 are being incorporated into the land development code as Article I of Chapter 14.

SECTION 5. ADOPTION OF NEW CHAPTER 1 OF THE LAND DEVELOPMENT CODE. The new Chapter 1 of the Town of Fort Myers Beach land development code entitled “GENERAL PROVISIONS” shall be as contained in the attached Exhibit A. Entirely new language is indicated with underlining and language being repealed from the transitional land development regulations is indicated with ~~strike-throughs~~.

SECTION 6. AMENDMENTS TO CHAPTER 2 OF THE LAND DEVELOPMENT CODE. Chapter 2 of the Town of Fort Myers Beach land development code entitled “ADMINISTRATION” is hereby amended to read as shown in the attached Exhibit B, which amends the following sections of Chapter 2: Sec. 2-303 Intent and Purpose of Article, Sec. 2-306 Computation of Amount, Sec. 2-307 Payment, Sec. 2-309 Trust Accounts, Sec. 2-310 Use of Funds, Sec. 2-311 Refund of Fees Paid, Sec. 2-312 Exemptions, Sec. 2-313 Credits, and Sec. 2-420 Intent. Article V of Chapter 2 is now divided into three divisions, as also shown in the attached Exhibit B. Entirely new language is indicated with underlining and language being repealed is indicated with ~~strike-throughs~~.

SECTION 7. AMENDMENTS TO CHAPTER 6 OF THE LAND DEVELOPMENT CODE. Chapter 6 of the Town of Fort Myers Beach land development code entitled “MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS” is hereby amended to read as shown in Exhibit C, which amends the following sections of Chapter 6: Sec. 6-405 Definitions, Sec. 6-444 Applications and Certifications, Sec. 6-472 Specific Standards, and Sec. 6-473. Entirely new language is indicated with underlining and language being repealed is indicated with ~~strike-throughs~~.

SECTION 8. ADOPTION OF NEW CHAPTER 14 OF THE LAND DEVELOPMENT CODE. The new Chapter 14 of the Town of Fort Myers Beach land development code entitled “ENVIRONMENT AND NATURAL RESOURCES” shall be as contained in the attached Exhibit D. The new Chapter 14 contains the following articles: Article I Beach and Dune Management, Article II Sea Turtle Conservation, Article III Southern Bald Eagle Protection, Article IV Wetlands Protection, Article V Tree Protection, and Article VI Mangrove Enforcement. Entirely new language is indicated with underlining and language being repealed from the transitional land development regulations is indicated with ~~strike-throughs~~.

SECTION 9. ADOPTION OF NEW CHAPTER 22 OF THE LAND DEVELOPMENT CODE. The new Chapter 22 of the Town of Fort Myers Beach land development code entitled “HISTORIC PRESERVATION” shall be as contained in the attached Exhibit E. The new Chapter 22 contains the following articles: Article I In General, Article II Administration and Enforcement, Article III Designation of Historic Resources and Districts, and Article IV Maintenance and Repair of Premises. Entirely new language is indicated with underlining and language being repealed from the transitional land development regulations is indicated with ~~strike-throughs~~.

SECTION 10. ADOPTION OF NEW CHAPTER 26 OF THE LAND DEVELOPMENT CODE. The new Chapter 26 of the Town of Fort Myers Beach land development code entitled “MARINE FACILITIES” shall be as contained in the attached Exhibit F. The new Chapter 26 contains the following articles: Article II Docks and Other Shoreline Structures, and Article III. Marine Sanitation. Entirely new language is indicated with underlining and language being repealed from the transitional land development regulations is indicated with ~~strike-throughs~~.

SECTION 11. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION 12. EFFECTIVE DATE. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Ryneanson and seconded by Council Member Cain and, upon being put to a vote, the result was as follows:

Howard Ryneanson	aye
Daniel Hughes	aye
Bill Thomas	aye
W. H. “Bill” Van Duzer	aye
Terry Cain	aye

DULY PASSED AND ENACTED this 4th day of February, 2002.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
Daniel Hughes, Mayor

Approved as to form by:

Richard V.S. Roosa, Town Attorney

Exhibit A

PROPOSED ADOPTION OF CHAPTER 1 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1 GENERAL PROVISIONS

- Sec. 1-1 Designation and citation of land development code.*
- Sec. 1-2 Rules of construction and definitions.*
- Sec. 1-3 Catchlines of sections; history notes, cross references and state law references; references to chapters, sections or articles.*
- Sec. 1-4 Effect of repeal of ordinances.*
- Sec. 1-5 General penalty; continuing violations.*
- Sec. 1-6 Enforcement of land development code.*
- Sec. 1-7 Severability of parts of land development code.*
- Sec. 1-8 Provisions considered continuation of existing ordinances.*
- Sec. 1-9 Effect of land development code on prior offenses, penalties and rights.*
- Sec. 1-10 Ordinances not affected by land development code.*
- Sec. 1-11 Fort Myers Beach Comprehensive Plan. Lee Plan controls where conflict with land development code exists.*
- Sec. 1-12 Editor's notes.*
- Sec. 1-13 Amendments to land development code.*
- Sec. 1-14 Supplementation of land development code.*
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Sec. 1-1. Designation and citation of land development code.

The ~~ordinances embraced in the following chapters and sections shall constitute and be designated as the "Lee County, Florida, land development code," and also may be cited as the "Fort Myers Beach Lee County Land Development Code."~~

~~State law reference(s) -- Requirement that county codify and publish its ordinances, F.S. § 125.68.~~

Sec. 1-2. Rules of construction and definitions.

(a) In the construction of this ~~land development code~~, and of all ordinances, the rules and definitions set out in this section shall be observed, unless inconsistent with the manifest intent of the ~~town council. Board of County Commissioners.~~ town council. Board of County Commissioners. The rules of construction and definitions in this section do not apply to any section of this ~~land development code~~ that contains any express provisions excluding their application, or where the subject matter or context of such section may be repugnant thereto.

(b) *Generally.*

- (1) All general provisions, terms, phrases and expressions contained in this ~~land development code~~ will be liberally construed in order that the true intent and meaning of the ~~town council Board of County Commissioners~~ town council Board of County Commissioners may be fully carried out.
- (2) Terms used in this ~~land development code~~, unless otherwise specifically provided, have the meanings prescribed by the statutes of the state for the same terms.
- (3) In the event of any difference in meaning or implication between the text of this ~~land development code~~ and any caption, illustration, summary table or illustrative table, the text shall control.
- (4) Any words used in the present tense shall include the future; and any words in the singular number shall include the plural, and vice versa, unless the context clearly indicates the contrary; and words of the masculine gender shall be construed to include the feminine gender and vice versa.
- (5) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. "Or" indicates that the connected terms, conditions, provisions or events may apply singly but not in any combination.

- c. "Either . . . or" indicates that the connected terms, items, conditions, provisions or events shall apply singly but not in combination.
- (6) The provisions of this ~~land development~~ code shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety, and welfare.
- (7) This ~~land development~~ code constitutes the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. Where any provisions of this ~~land development~~ code conflict such that one provision causes greater restrictions to be imposed than another provision, the provision imposing the greater restriction or regulation will control.

State law reference(s)--Construction of statutes, F.S. ch. 1.

(c) The following words, terms and phrases, when used in this ~~land development~~ code, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~Board of county commissioners.~~ The term "board of county commissioners"²² means the board of county commissioners of Lee County, Florida.

Building official means the same officer as appointed by the town manager through § 6-44.

~~Circuit court.~~ The term "circuit court"²² means the circuit court of the 20th Judicial Circuit in and for Lee County.

~~Clerk of the circuit court or county clerk.~~ The terms "clerk of the circuit court"²² and "county clerk"²² means the clerk of the circuit court of the 20th Judicial Circuit in and for Lee County.

Computation of time. In computing any period of time prescribed or allowed by ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days,

intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation unless otherwise specifically provided under another section of this ~~land development~~ code.

State law reference(s)--Similar provisions, Florida Rules of Civil Procedure, rule 1.090(a).

~~County.~~ The term "county"²² means Lee County, Florida.

~~County administrator.~~ The term "county administrator"²² includes designees of the county administrator.

Delegation of authority. A provision requiring ~~the head of a department or some other county or town~~ officer or employee to do some act or perform some duty is to be construed to authorize that the head of the department or other officer to designate, delegate and authorize subordinates to perform the required act or perform the duty.

~~F.A.C.~~ The abbreviation "F.A.C." refers to means the Florida Administrative Code.

~~F.S.~~ The abbreviation "F.S." shall mean and refer to the latest edition or supplement of the Florida Statutes.

Fort Myers Beach Comprehensive Plan means the comprehensive plan adopted by the town council pursuant to F.S. § 163.3178.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, and corporations as well as to males.

~~Health department and county health department~~ [moved to ch. 34]

Includes. The term "includes" does not limit a term to the specified example, but its meaning shall be extended to all other instances or circumstances of like kind or similar character.

~~Joint authority.~~ Words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

~~Keeper and proprietor.~~ The terms "keeper"²² and "proprietor"²² include any person, firm, association,

corporation, club or copartnership, whether acting alone or through a servant, agent or employee.

Land development code. The term “land development code” or “this code” means the Fort Myers Beach Land Development Code, Lee County, Florida, as designated in § 1-1.

May. The term “may” shall be construed as being permissive and will mean “has discretion to,” “is permitted to,” or “is allowed to.” “May not” shall be construed as being mandatory and will mean “is disallowed from,” or “is not permitted to.”

Month. ~~The term “month”~~ means a calendar month.

Must. ~~The term “must”~~ shall be construed as being mandatory and will mean “is required to (be).”

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Notary, notarize(d). Whenever the terms “notarize” or “notarized” appear, they expressly include and contemplate the use of the written declaration set forth under F.S. § 92.525, so long as the cited statutory requirements are met, except that written declarations may not include the words “to the best of my knowledge and belief” as this limitation is not permitted by the provisions of this code.

Number. Words used in the singular number include the plural. Words used in the plural number include the singular.

Oath. The term “oath” includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath; and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

Officer and official. Whenever reference is made to any officer or official, the reference shall be taken to be to such officer or official of the Town of Fort Myers Beach, unless indicated otherwise. Lee

County, Florida:

Owner. The term “owner,” as applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or a part of such building or land.

Person. The term “person” shall extend and be applied to any individual, child, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, unincorporated association, and all other groups and legal entities or combinations thereof.

State law reference(s)--*Similar provisions, F.S. § 1.01(3).*

Property. The term “property” includes real and personal property.

Public health, safety, and welfare. The phrase “public health, safety, and welfare” shall include, but is not limited to, comfort, good order, appearance, convenience, law enforcement and fire protection, prevention of overcrowding of land, avoidance of undue concentration of population, facilitation of the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreation facilities, housing, and other requirements and services; and conservation, ~~development~~, utilization, and protection of natural resources.

Shall. ~~The term “shall”~~ will be construed as being mandatory and will mean “has a duty to.” “Shall not” shall be construed as being mandatory and will mean “is disallowed from,” or “is not permitted to.”

Sidewalk. ~~The term “sidewalk”~~ means any portion of a street between the curblin and the adjacent property line intended for the use of pedestrians.

State. ~~The term “state”~~ means the state of Florida.

Street and road. ~~The terms “street” and “road”~~ includes any street, avenue, boulevard, road, alley, bridge, viaduct or other public or private highway in the county.

Tables, illustrations, etc. In case of any difference of meaning or implication between the

text of this ~~land development~~ code and any caption, illustration, summary table or illustrative table, the text shall control.

Tenant or occupant. The terms “tenant” and “occupant,” as applied to a building or land, include any person holding a written or oral lease of or who occupies the whole or part of such building or land, either alone or with others.

Town means the Town of Fort Myers Beach, Florida.

Town council means the town council of the Town of Fort Myers Beach, Florida.

Town manager means the town manager of the Town of Fort Myers Beach, Florida.

Used for. The term “used for” includes the term “arranged for,” “designed for,” “maintained for,” or “occupied for.”

~~Week.~~ The term “week” means seven consecutive days.

Will shall be construed as being mandatory and will mean “has a duty to.” “Will not” shall be construed as being mandatory and will mean “is disallowed from,” or “is not permitted to.”

Written or in writing. The terms “written” and “in writing” include any representation of words, letters or figures, whether by printing or otherwise.

~~Year.~~ The term “year” means a calendar year.

Sec. 1-3. Catchlines of sections; history notes, cross references and state law references; references to chapters, sections or articles.

(a) The catchlines of the several sections of this ~~land development~~ code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is

amended or reenacted.

(b) The history or source notes appearing in parentheses after any sections in this ~~land development~~ code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this ~~land development~~ code or which otherwise appear in footnote form are provided for the convenience of the user of this ~~land development~~ code and have no legal effect.

(c) All references to chapters, articles, or sections are to chapters, articles, and sections of this ~~land development~~ code unless otherwise specified.

Sec. 1-4. Effect of repeal of ordinances.

(a) The repeal or amendment of an ordinance will not revive any ordinance or part thereof that was not in force before or at the time the ordinance repealed or amended took effect.

(b) The repeal or amendment of any ordinance shall not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution, or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed or amended.

(c) Notwithstanding a more recent ordinance’s express repeal of a pre-existing ordinance, the reenactment of any previously existing provisions, including any amendments, through the use of similar or identical provisions in the repealing ordinance will continue the reenacted provisions in full force and effect from their original effective date. Only those provisions of the previously existing ordinance that are not reenacted will be considered void and without further effect. Any new provisions of the repealing ordinance will operate as amendments to the reenacted, previously existing text and become effective as part of the repealing ordinance.

Sec. 1-5. General penalty; continuing violations.

(a) In this section, the phrase “violation of this ~~land development~~ code” means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the phrase “violation of this ~~land development~~ code” does not include the failure of a town or county officer or town or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this ~~land development~~ code shall be punished by a fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment.

(d) In addition to the criminal penalties and enforcement procedures provided in this code, the violation of any provision of this code may be:

- (1) restricted by injunction, including a mandatory injunction;
- (2) enforced by action of the code enforcement hearing examiner, in accordance with §§ 2-421–2-429;
- (3) enforced by citation, in accordance with §§ 2-430; and
- (4) otherwise abated in any manner provided by law, including other equitable or civil relief.

Any such suit or action may be instituted and maintained by the town council, by any citizen of the town, or by any person affected by the violation of this code. [this subsection modified and relocated from § 34-265]

(e) Upon notice from the director, activities contrary to the provisions of this code shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the

property, his agent, or the person doing the work, or shall be posted on the property, and shall state the conditions under which work may be resumed. Where an emergency exists or irreversible damage may be occurring, written notice shall not be required.

(f) Persons who may be charged with a violation of this code include:

- (1) Owners, agents, lessees, tenants, contractors, and any other person using the land or structure where the violation has been committed or currently exists.
- (2) Any person who knowingly commits or assists in such violation.
- (3) Rental agents who fail to take adequate steps to prevent such violations on property they manage.

[this subsection modified and relocated from § 34-264]

(g) With respect to violations of this ~~land development~~ code that are continuous with respect to time, each day the violation continues constitutes a separate offense in the absence of provisions to the contrary.

(h) The imposition of a penalty does not prevent revocation or suspension of a license, permit, or franchise; the imposition of civil penalties; equitable relief; or other administrative actions.

(i) Violations of this ~~land development~~ code may be abated by injunctive or other equitable or civil relief, and no bond nor proof of intent or scienter shall be required. The imposition of a penalty does not prevent equitable relief.

(j) Any violation of this code that arose from provisions that are subsequently repealed and reenacted will continue to be a violation of this code and any penalties imposed for those violations will continue to exist unless the subsequent amendment or repeal of the violated provisions clearly intends to make previous violations legal and expressly voids any penalties imposed for those violations.

(k) Violations of this ~~land development~~ code may be abated by injunctive or other equitable or civil relief, and no bond nor proof of intent or scienter shall be required. The imposition of a penalty does

not prevent equitable relief.

State law reference(s)--Penalty for ordinance violations, F.S. § 162.21 and 166.0415 +25.69.

Sec. 1-6. Enforcement of land development code.

(a) Enforcement of the provisions of ~~the this land development code~~ is the responsibility of the town manager ~~county department or division most closely associated and familiar with the particular provision in question~~ unless otherwise provided by this ~~land development code~~. When so authorized by interlocal agreement, the director of the Lee County department of community development and his designees ~~The division of codes and building services, or its successor, shall administer and enforce~~ assist in the enforcement of these provisions on behalf of the Town of Fort Myers Beach ~~and in the presentation of unabated violations before the hearing examiner for determination.~~

(b) Except where otherwise provided by this code, the town manager, or other party if authorized by interlocal agreement, shall have the discretion using accepted rules of statutory construction to interpret and apply these provisions.

~~(c) [text previously proposed for this subsection has now been moved to § 1-5(f)]~~

Sec. 1-7. Severability of parts of land development code.

It is declared to be the intent of the town council ~~Board of County Commissioners~~ that, if any section, subsection, sentence, clause, phrase, or portion of this ~~land development code~~ or any ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding or invalidity shall not affect the remaining portions of this ~~land development code~~ or any ordinance. It shall be construed to have been the legislative intent to pass this ~~land development code~~ or such ordinance without such unconstitutional, invalid, or inoperative part therein, and the remainder of this ~~land development code~~ or such ordinance after the exclusion of such part or parts shall be deemed and held to be valid as if such part or parts had not been included in this ~~land development code~~ or ordinance. If this ~~land development code~~ or any ordinance or any provision thereof is held inapplicable to any person, group of persons,

property or kind of property, or circumstances or set of circumstances, such holding shall not affect the applicability of this ~~land development code~~ to any other person, property, or circumstance.

Sec. 1-8. Provisions considered continuation of existing ordinances.

The provisions of this ~~land development code~~, insofar as they are substantially the same as legislation previously adopted by the ~~county~~ relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1-9. Effect of land development code on prior offenses, penalties and rights.

(a) Nothing in this ~~land development code~~ or the ordinance adopting this ~~land development code~~ shall affect any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this ~~land development code~~.

(b) The adoption of this ~~land development code~~ shall not be interpreted as authorizing any use or the continuance of any use of a structure or premises in violation of any ordinance of the town county in effect on the date of adoption of this ~~land development code~~.

Sec. 1-10. Ordinances not affected by land development code.

(a) Nothing in this ~~land development code~~ or the ordinance adopting this ~~land development code~~, unless otherwise provided in this ~~land development code~~ or such ordinance, shall affect any ordinance or portion of an ordinance:

- (1) Promising or guaranteeing the payment of money for the town county, or authorizing the issuance of any bonds of the town county or any evidence of the town's county's indebtedness, or any contract or obligation assumed by the town county.
- (2) Granting any right or franchise or conveying any oil, gas, or mineral rights.
- (3) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way.
- (4) Making any appropriation.
- (5) Levying or imposing taxes or fees not

- codified in this ~~land development~~ code.
- (6) Amending any local law, i.e., special act which has been converted to an ordinance.
 - (7) Providing for local services or improvements and assessing taxes or other charges therefor.
 - (8) Dedicating, accepting or vacating any plat or subdivision.
 - (9) Rezoning specific property.
 - (10) Which is temporary, although general in effect.
 - (11) Which is special, although permanent in effect.
 - (12) The purpose of which has been accomplished.
 - (13) Which is included in the town's ~~Lee County~~ code of ordinances.

(b) The ordinances designated in subsection (a) of this section are recognized as continuing in full force and effect to the same extent as if set out at length in this ~~land development~~ code.

Sec. 1-11. Fort Myers Beach Comprehensive Plan. ~~Lee Plan controls where conflict with land development code exists.~~ [reproduced here from Fort Myers Beach Ordinance No. 98-14]

(a) This ~~section ordinance~~ is enacted to carry out the purpose and intent of, and exercise the authority set out in, the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 through 163.3217 and Chapter 166, as amended.

(b) The ~~new town's~~ comprehensive plan is ~~shall be~~ entitled the "Fort Myers Beach Comprehensive Plan;" and became effective January 1, 1999, pursuant to Ordinance No. 98-14 and later amendments.

- (1) The Town of Fort Myers Beach shall publish a single-volume document that contains the adopted portions of the Fort Myers Beach Comprehensive Plan and much of the extensive research upon which this plan was based. This volume shall be organized into 15 chapters, as follows:

- Chapter 1, Introduction,*
- Chapter 2, "Envisioning Tomorrow's Fort Myers Beach"*
- Chapter 3, Community Design Element*
- Chapter 4, Future Land Use Element*
- Chapter 5, Coastal Management Element*

- Chapter 6, Conservation Element*
- Chapter 7, Transportation Element*
- Chapter 8, Utilities Element*
- Chapter 9, Stormwater Management Element*
- Chapter 10, Recreation Element*
- Chapter 11, Capital Improvements Element*
- Chapter 12, Housing Element*
- Chapter 13, Historic Preservation Element*
- Chapter 14, Intergovernmental Coordination Element*
- Chapter 15, Procedures and Monitoring*

- (2) Only the following specific portions of this volume ~~are being formally~~ were adopted ~~through this ordinance as the town's~~ its new comprehensive plan under F.S. § 163.3161 through 163.3217, as amended:
- a. *All of Chapters 1, 2, and 15.*
 - b. *All goals, objectives, and policies found in Chapters 3 through 14.*
 - c. *The "Future Land Use Map" (Figure 16 in the Future Land Use Element).*
 - d. *The "Future Transportation Map" (Figure 18 in the Transportation Element).*
 - e. *The five-year schedule of capital improvements (Table 11-7 in the Capital Improvements Element)*
- (3) The published volume shall provide, in its opening chapter, this same description of which portions of the volume have been formally adopted by the town.
- (4) The published volume, including future amendments, is incorporated by this reference as an integral part of this ~~code ordinance~~ and it shall be placed on file with the town clerk. It shall remain available for inspection by the public at town hall, and a copy shall be placed at the reference desk of the Fort Myers Beach Public Library. Additional copies shall also be sold at town hall for a reasonable publication charge.

(c) The applicability and effect of the Fort Myers Beach Comprehensive plan shall be as provided by its specific terms, by the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 through 163.3217, and by this section ordinance.

- (1) No public or private development shall be permitted except in conformity with the Fort Myers Beach Comprehensive Plan, and all ~~land development regulations and~~

development orders and building permits shall be consistent with this plan.

- (2) Whenever the requirements or provisions of this comprehensive plan ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

(d) The town council anticipates that this comprehensive plan will be revised in the future through amendments adopted pursuant to state law. Sections of this comprehensive plan may be renumbered or relettered and typographical and grammatical errors can be corrected where authorized by the town manager without requiring a public hearing, provided the changes do not affect the intent or application of this comprehensive plan. Any such changes will be reflected in the town's next publication of this comprehensive plan or portion thereof.

~~All development, as that term is defined in F.S. § 380.04, in the unincorporated portion of the county must be consistent with the Lee Plan. Where there are apparent conflicts between the Lee Plan and any adopted rule, regulation or ordinance, the Lee Plan shall prevail.~~

Sec. 1-12. Editor's notes.

References and editor's notes following certain sections of ~~the land development~~ this code are inserted as an aid and guide to the reader, and are not controlling or meant to have any legal effect.

Sec. 1-13. Amendments to land development code.

(a) All ordinances passed subsequent to this ~~land development~~ code which amend, repeal, or in any way affect this ~~land development~~ code may be numbered in accordance with the numbering system of this ~~land development~~ code and printed for inclusion in the ~~land development~~ code, or, in the case of repealed chapters, sections, and subsections or any part thereof repealed by subsequent ordinances, such repealed portions may be excluded from this ~~land development~~ code by omission from reprinted pages affected thereby, and such subsequent ordinances, as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such

time that this ~~land development~~ code and subsequent ordinances numbered or omitted are readopted as a new land development code by the town council ~~Board of County Commissioners~~.

(b) Amendments to any of the provisions of this ~~land development~~ code may be made by amending such provisions by specific reference to the section or subsection number of this ~~land development~~ code in the following language: "That section _____ of the Fort Myer Beach Lee County Land Development Code, is hereby amended to read as follows" The new provisions shall then be set out in full as desired.

(c) If a new section or subsection not heretofore existing in the land development code is to be added, the following language may be used: "That the Fort Myer Beach Lee County Land Development Code, is hereby amended by adding a section to be numbered _____, which section or subsection shall read as follows:" The new section shall then be set out in full as desired.

(d) Repeal of any of the provisions of this ~~land development~~ code may be effected by repealing such provisions by specific reference to the section or subsection number of this ~~land development~~ code in the following language: "That section _____ of the Fort Myer Beach Lee County Land Development Code, is hereby repealed in its entirety."

(e) Every ordinance introduced which proposes to amend or repeal any portion of this ~~land development~~ code shall show, by proper reference, the chapter, article, and section proposed to be amended; or, if it proposes to add to this ~~land development~~ code a new chapter, article, or section, it shall indicate, with reference to the arrangement of this ~~land development~~ code, the proper number of such chapter, article, or section.

Sec. 1-14. Supplementation of land development code.

(a) By contract or by town county personnel, supplements to this ~~land development~~ code shall be prepared and printed whenever authorized or directed by the town county. A supplement to ~~the land development~~ this code shall include all substantive permanent and general parts of ordinances affecting land use passed by the town

~~council Board of County Commissioners~~ during the period covered by the supplement and all changes made thereby in ~~the land development this~~ code. The pages of a supplement shall be so numbered that they will fit properly into ~~the land development this~~ code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, ~~the land development this~~ code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this ~~land development~~ code, all portions of the ~~land development~~ code which have been repealed shall be excluded from ~~the land development this~~ code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this ~~land development~~ code, the codifier, meaning the person, agency, or organization authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;

- (2) Provide appropriate catchlines, headings, and titles for sections and other subdivisions of ~~the land development this~~ code printed in the supplement, and make changes in catchlines, headings, and titles;
- (3) Assign appropriate numbers to sections and other subdivisions to be inserted in ~~the land development this~~ code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- (4) Change the words “this ordinance” or words of the same meaning to “this chapter,” “this article,” “this division,” etc., as the case may be, or to “sections _____ through _____.” The inserted section numbers will indicate the sections of ~~the land development this~~ code which embody the substantive sections of the ordinance incorporated into ~~the land development this~~ code; and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into ~~the land development this~~ code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in ~~the land development this~~ code.

Exhibit B

PROPOSED AMENDMENTS TO CHAPTER 2 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 2 ADMINISTRATION

ARTICLE IV. IMPACT FEES

- Sec. 2-301. Statutory authority.*
Sec. 2-302. Applicability of article.
Sec. 2-303. Intent and purpose of article
Sec. 2-304. Definitions and rules of construction.
Sec. 2-305. Imposition.
Sec. 2-306. Computation of amount.
Sec. 2-307. Payment.
Sec. 2-308. Reserved.
Sec. 2-309. Trust ~~accounts, funds.~~
Sec. 2-310. Use of funds.
Sec. 2-311. Refund of fees paid.
Sec. 2-312. Exemptions.
Sec. 2-313. Credits.
Sec. 2-314. Appeals.
*Sec. 2-315. Enforcement of article; penalty;
furnishing false information.*
Secs. 2-316--2-419. Reserved.

ARTICLE V. CODE ENFORCEMENT HEARING EXAMINER

Division 1. Generally

- Sec. 2-420. Intent.*

Division 2. Hearing Examiner

- Sec. 2-421. Creation of position of hearing
examiner.*
Sec. 2-422. Applicability.
Sec. 2-423. Definitions.
Sec. 2-424. Enforcement procedure.
Sec. 2-425. Conduct of hearing.
*Sec. 2-426. Powers of the code enforcement
hearing examiner.*
Sec. 2-427. Penalties and liens.
Sec. 2-428. Appeals.
Sec. 2-429. Notices.

Division 3. Citations

- Sec. 2-430. Citation procedures; penalties.*
Sec. 2-431. Conflict.
Secs. 2-432--2-459. Reserved.
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ARTICLE IV. IMPACT FEES

Sec. 2-301. Statutory authority.

The Town of Fort Myers Beach has the authority to adopt this article pursuant to article VIII of the constitution of the state, F.S. ch. 166 and F.S. §§ 163.3201, 163.3202, and 380.06(16).

Sec. 2-302. Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-303. Intent and purpose of article.

(a) This article is intended to implement and be consistent with the Fort Myers Beach Comprehensive Plan.

(b) The purpose of this article is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures for transportation, regional parks, community parks, and fire protection, as contemplated by the Fort Myers Beach Comprehensive Plan.

(c) This article also reflects the required payment of school impact fees in accordance with Lee County Ordinance No. 01-21, which became effective on December 1, 2001.

Sec. 2-304. Definitions and rules of construction.

(a) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, all transportation terms shall have the same meaning as in the Fort Myers Beach Comprehensive Plan, and in ch. 34 and ch. 10, unless otherwise indicated.

(b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section and in the latest edition of the Institute of Transportation Engineers

(ITE) manuals, except where the context clearly indicates a different meaning:

Assisted living facility has the same meaning given it in ch. 34.

Building official means the same officer as appointed by the town manager through § 6-44.

Building permit means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term shall specifically include certificates of occupancy and occupancy permits, as those permits are defined or required by this code.

Building with mixed uses means a building which contains more than one principal use, as that term is defined in ch. 34.

Capital improvement for community or regional parks means land acquisition, site improvements, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded community or regional park, buildings and equipment. Off-site improvements may also include sidewalks and bikeways which connect to the park facility. Capital improvements do not include maintenance and operations.

Capital improvement for fire protection includes land acquisition and related expenses, site improvements, off-site improvements associated with new or expanded facilities, buildings and equipment, including communications equipment, with an average useful life of at least three years, but excludes maintenance and operations.

Capital improvement for transportation means preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for transportation construction projects, including but not limited to:

- (1) Construction of new or improved through or turn lanes;
- (2) Construction of curbs, medians, sidewalks, bicycle paths, and shoulders in conjunction

- with roadway construction;
- (3) Construction of new pedestrian or bicycle facilities;
- (4) Construction of new bridges;
- (5) Construction of new drainage facilities in conjunction with other transportation construction;
- (6) Purchase and installation of traffic signalization (including both new installations and upgrading signalization);
- (7) Relocating utilities to accommodate new transportation construction; and
- (8) On-street and off-street parking when such parking is intended for and designed to protect or enhance the vehicular and pedestrian capacity of the existing street network.

Site-related road improvements as defined herein are not a capital improvement for transportation under this definition.

Community park means a tract of land designated and used by the public primarily for active recreation but also used for educational and social purposes and passive recreation. Community parks also include bikeways that are designed and used primarily for active recreation. A community park generally serves a specific community composed of at least several neighborhoods. Community park standards are based upon several subclassifications of community parks: standard community parks, community recreation centers, community pools, and school parks. The term “community park” specifically includes school sites and publicly owned parks that are available for use by the surrounding neighborhoods.

Dwelling unit has the same meaning given it in ch. 34.

Fast food restaurant has the same meaning given it in ch. 34.

Feepayer means a person applying to the town for the issuance of a building permit for a type of land development activity listed in the impact fee schedule in § 2-306, regardless of whether the person owns the land to be developed.

Fire district means the Fort Myers Beach Fire Control District, a special district which is authorized to provide fire protection and rescue service.

Fire protection means the prevention and extinguishment of fires, the protection of life and property from fire, and the enforcement of municipal, county and state fire prevention codes, as well as any law pertaining to the prevention and control of fires, when enforcement duties are performed by firefighters, as defined in F.S. § 633.30, or by fire safety inspectors, as defined in F.S. § 633.021(8), and such other persons who may be employed by a fire district. The term “fire protection” also includes rescue and emergency medical services.

Fort Myers Beach Comprehensive Plan means the town’s comprehensive plan adopted pursuant to F.S. ch. 163, as amended from time to time.

General office means, for the purpose of this article only, any type of office except a medical office. A general office building may contain accessory uses such as a beauty or barber shop, shack bar, cafeteria, day care center, or other uses where permitted by ch. 34.

Hotel/motel has the same meaning given it in ch. 34.

Land development activity means any change in land use, or any construction of buildings or structures, or any change in the use of any building or structure that adds dwelling living units, attracts or produces vehicular trips, or requires fire protection.

~~*Living unit* has the same meaning given it in ch. 34.~~

Medical office has the same meaning given it in ch. 34.

Multiple-family building means and includes those definitions set forth in ch. 34 for multiple-family building, ~~duplex, townhouse,~~ and two-family dwelling units attached.

Recreation facility has the same meanings given it in ch. 34.

Regional park means a tract of land designated and used by the public for active and passive recreation. A regional park draws users from a larger area than a community park, frequently from the entire county and beyond, by providing access to especially attractive natural resources, amenities and specialized activities. It specifically includes

municipally owned parks when they are used as regional parks.

Retail store means the use of a building to sell goods and to provide personal services (as described in ch. 34) to the general public.

Road has the same meaning given it in F.S. § 334.03.

Shopping center means an integrated group of commercial establishments planned and managed as a unit, consisting primarily of retail stores but sometimes containing other uses such as restaurants, offices, and personal services.

Single-family residence has the same meaning given it in ch. 34.

Site-related road improvements means physical improvements and right-of-way dedications for direct access improvements to the development in question. Direct access improvements include but are not limited to the following:

- (1) Site driveways and roads;
- (2) Median cuts made necessary by those driveways or roads;
- (3) Right turn, left turn, and deceleration or acceleration lanes leading to or from those driveways or roads;
- (4) Traffic control measures for those driveways or roads; and
- (5) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

Timeshare unit has the same meaning given it in ch. 34.

Town manager means the manager of the Town of Fort Myers Beach, or the officials that he or she may designate to administer the various provisions of this article.

Warehouse means the use of a building or structure primarily for the storage of goods, boats, or vehicles.

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

Sec. 2-305. Imposition.

- (a) Except as provided in §§ 2-312 through 2-

314, any person who seeks to develop land by applying for the issuance of a building permit to make an improvement to land for one of the uses which is specified in § 2-306 shall be required to pay impact fees in the manner and amount set forth in this article.

(b) No building permit for any activity requiring payment of impact fees pursuant to § 2-306 shall be issued by the town unless and until the impact fees required by this article have been paid.

(c) In the case of structures moved from one location to another, impact fees shall be collected for the new location if the structure is a type of land development listed in § 2-306, regardless of whether impact fees had been paid at the old location, unless the use at the new location is a

replacement of an equivalent use. If the structure so moved is replaced by an equivalent use, no impact fees shall be owed for the replacement use. In every case, the burden of proving past payment of impact fees or equivalency of use rests with the feepayer.

Sec. 2-306. Computation of amount.

(a) At the option of the feepayer, the amount of the impact fees may be determined by the schedule set forth in this section.

(b) References in this schedule to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not to usable, interior, rentable, noncommon, or other forms of net square footage.

FORT MYERS BEACH IMPACT FEE SCHEDULE

Impact Fees per Unit (rounded to nearest dollar)¹

LAND USE TYPE	— — Parks — —					Fire Protection	Schools ²
	Transportation	Regional	Community	Community	Community		
Residential (fee per dwelling unit):							
Single-family residence	\$2,436	\$461 \$253	\$655 \$619			\$560	\$2,232
Multiple-family building (<i>per dwelling unit</i>)	\$1,687	\$341 \$131	\$485 \$408			\$269	\$691
Timeshare unit	\$1,834	\$341 \$228	\$485 \$867			\$269	\$0
Hotel/motel room	\$1,834	\$230 \$179	\$327 \$417			\$308	\$0
Assisted living facility (<i>per dwelling unit</i>) (see § 34-1494 for density equivalents)	\$1,687	\$0 \$131	\$0 \$408			\$269	\$0
Commercial (fee per 1,000 sq. ft. except as noted):							
Retail store or shopping center	\$3,992	\$0	\$0	\$549		\$0	
Bank	\$6,063	\$0	\$0	\$549		\$0	
Car wash, self-service (fee per stall)	\$7,749	\$0	\$0	\$549		\$0	
Convenience store with gas pumps	\$8,715	\$0	\$0	\$549		\$0	
Movie theater	\$5,600	\$0	\$0	\$549		\$0	
Restaurant, fast food	\$9,886	\$0	\$0	\$549		\$0	
Restaurant, standard	\$4,905	\$0	\$0	\$549		\$0	
Office (fee per 1,000 square feet):							
General office	\$2,254	\$0	\$0	\$594		\$0	
Medical office	\$6,334	\$0	\$0	\$594		\$0	
Institutional (fee per 1,000 square feet):							
Church	\$1,402	\$0	\$0	\$549		\$0	
Day care center	\$3,900	\$0	\$0	\$549		\$0	
Elementary/secondary school (private)	\$611	\$0	\$0	\$549		\$0	
Warehouse (fee per 1,000 square feet):	\$1,198	\$0	\$0	\$123		\$0	

¹ In addition to the impact fees listed, an additional 3 percent administrative charge will be levied in accordance with § 2-310(e).

² School impact fees are collected in accordance with Lee County Ordinance No. 01-21, effective December 1, 2001.

(c) If a building permit is requested for a building with mixed uses, as defined in § 2-304, then the fees shall be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. However, a shopping center will be considered a principal use.

(d) If the type of development activity for which a building permit is applied is not specified on the schedule, the town manager shall use the fee applicable to the most nearly comparable type of land use on the schedule. For transportation impact fees, the town manager shall be guided in the selection of a comparable type by the Institute of Transportation Engineers' *Trip Generation* (latest edition), studies or reports by the federal, state, and county departments of transportation, and articles or reports appearing in the ITE Journal. If the town manager determines that there is no comparable type of land use on the fee schedule set out in this subsection, then the town manager shall determine the fee by:

- (1) Using traffic generation statistics from the sources named in this subsection; and
- (2) Applying the formula set forth in subsection (f) of this section

(e) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, impact fees shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment, or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.

(f) If an impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or collected by the town, whichever is applicable. If impact fees are owed, no permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until all impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

(g) The person applying for the issuance of a building permit may, at his option, submit evidence to the town manager indicating that the fees set out in the impact fee schedule in this section are not

applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with any applicable administrative code, the town manager may adjust the fee to that appropriate for the particular development.

- (1) The adjustment may include a credit for recreation facilities provided to the development by the feepayer if the recreation facilities serve the same purposes and functions as set forth for regional and/or community parks.
- (2) If a feepayer opts not to have the transportation impact fee determined according to the impact fee schedule in this section, then the feepayer shall prepare and submit to the town manager an independent fee calculation study for the land development activity for which a building permit is sought. The independent fee calculation study shall measure the impact of the development in question on the transportation system by following the prescribed methodologies and formats for such studies established by Lee County's administrative code. The feepayer must attend a preapplication meeting with town manager or designee to discuss the traffic engineering and economic documentation required to substantiate the request. The traffic engineering or economic documentation submitted must address all aspects of the impact fee formula that the county manager determines to be relevant in defining the project's impacts at the preapplication meeting and must show the basis upon which the independent fee calculation was made, including but not limited to the following:
 - a. *Traffic engineering studies.*
 1. Documentation of trip generation rates appropriate for the proposed land development activity;
 2. Documentation of trip length appropriate for the proposed land development activity; and
 3. Documentation of trip data appropriate for the proposed land development activity.
 - b. *Cost documentation studies.* The feepayer may also provide documentation substantiating that the costs to accommodate the impacts of the proposed development, or the revenue

credits due to the development, differ from the average figures used in developing the fee schedule. This documentation shall be prepared and presented by qualified professionals in their respective fields and shall follow best professional practices and methodologies.

- (3) The following formula shall be used by the town manager to determine the transportation impact fee per unit of development:

$$\text{Impact Fee} = \text{VMT} \times \text{NET COST/VMT}$$

Where:
$$\text{VMT ADT} \times \% \text{NEW} \times \text{LENGTH} \div 2$$

ADT = Trip ends during average weekday

%NEW = Percent of trips that are primary, as opposed to passby or diverted-link trips

LENGTH = Average length of a trip on the approved road system

$\div 2$ = Avoids double-counting trips for origin and destination

$$\text{NET COST/VMT} = \text{COST/VMT} - \text{CREDIT/VMT}$$

$$\text{COST/VMT} = \text{COST/LANE-MILE} \div \text{AVG LANE CAPACITY}$$

COST/LANE-MILE = Average cost to add a new lane to the approved roadway system

AVG LANE CAPACITY = Average daily capacity of a lane at level of service "D"

$$\text{CREDIT/VMT} = \$/\text{GAL} \div \text{MPG} \times 365 \times \text{NPV}$$

\$/GAL = Capacity-expanding funding for roads per gallon of gasoline consumed

MPG = Miles per gallon, average for U.S. motor vehicle fleet

365 = Days per year (used to convert daily VMT to annual VMT)

NPV = Net present value factor (i.e., 12.46 for 20 years at 5% discount)

Sec. 2-307. Payment.

(a) The feepayer shall pay the impact fees required by this article to the building official prior to the issuance of the building permit for which the fees are imposed. No building permit may be issued for any development listed in the impact fee schedule in § 2-306 until the impact fees have been paid.

(b) In lieu of cash, up to ~~100~~ 97 percent of the impact fees may be paid by the use of credits created in accordance with the provisions of §§ ~~2-313, 312 and 2-314~~.

(c) All funds collected pursuant to this article shall be promptly transferred for deposit into the appropriate impact fee trust ~~accounts funds~~ and used solely for the purposes specified in this article.

Sec. 2-308. Reserved.

Sec. 2-309. Trust accounts, funds.

(a) There is hereby established ~~five~~ four impact fee trust ~~accounts, funds~~; one each for transportation, regional parks, community parks, ~~and fire protection, and schools~~.

(b) Funds withdrawn from these accounts must be used in accordance with the provisions of § 2-310.

Sec. 2-310. Use of funds.

(a) Funds collected from impact fees shall be used only for the purpose of capital improvements for transportation, regional parks, community parks, ~~and fire protection, and schools~~, as defined in § 2-304. Impact fee collections, including any interest earned thereon, less administrative costs retained ~~or collected~~ pursuant to subsection (e d) of this section, shall be used exclusively for capital improvements or expansion. These impact fee funds shall be segregated from other funds and shall be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements.

(b) Each fiscal year the town manager shall present to the town council a proposed capital improvement program for transportation, regional parks, and community parks, assigning funds, including any accrued interest, from the appropriate impact fee trust account fund to specific capital projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in each impact fee trust account fund until the next fiscal period, except as provided by the refund provisions of this article.

(c) The town shall remit fire protection impact fees to the fire district at least once each quarter, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement.

(d) The town shall remit school impact fees to Lee County at least monthly, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement. Lee County will remit these school impacts to the School Board in accordance with Lee County Ordinance 01-21.

(e) (d) The town is entity actually collecting impact fees shall be entitled to charge and collect retain up to three percent of the impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this article. This administrative charge is in addition to the impact fee amounts required by this article. The applicant is responsible for payment of the additional administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-311. Refund of fees paid.

(a) If a building permit expires, is revoked, voluntarily surrendered, or otherwise becomes void, and no construction or improvement of land has been commenced, then the feepayer shall be entitled to a refund of the impact fees paid as a condition for its issuance, except that three percent of the impact fee paid shall be retained as an administrative fee to offset the cost of processing the refund. Subject to the limitations set forth in subsection (b) of this section, the feepayer shall be entitled to a refund equal to 97 percent of the impact fees paid. This administrative fee is in addition to the charge collected at the time of fee payment. No interest

shall be paid to the feepayer on refunds due to noncommencement.

(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten years from the date the impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum. For school impact fees, this period is set at six years by Lee County Ordinance 01-21.

Sec. 2-312. Exemptions.

(a) The following shall be exempted from payment of the impact fees:

- (1) Alteration or expansion of an existing building or use of land, where no additional dwelling living units will be produced and where the use is not changed and where no additional vehicular trips or demand for fire protection will be produced over and above that produced by the existing use.
- (2) The construction of accessory buildings or structures which will not produce additional dwelling living units and where no additional vehicular trips or demand for fire protection will be produced over and above that produced by the existing use.
- (3) The replacement of an existing building with a new building or structure of the same use and at the same location, provided that no additional dwelling living units, vehicular trips, or fire protection demands will be produced over and above those produced by the original use of the land. However, no exemption will be granted if the existing building was removed 5 years or more before a building permit is issued for its replacement.
- (4) A building permit obtained by or for the United States of America, the state, or the county school board.
- (5) A building permit for which the impact fees thereof have been or will be paid or provided for pursuant to a written agreement, zoning approval, or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact by enforcement of the agreement, zoning approval or development order, and not by the application of this article.
- (6) A building permit which does not result in an

additional ~~dwelling living~~ unit, additional vehicular trips, or increased need for fire protection or emergency medical services.

(b) Exemptions must be claimed by the feepayer at the time of the application for a building permit. Any exemptions not so claimed will be deemed waived by the feepayer.

Sec. 2-313. Credits.

(a) Impact fee credits are subject to the following:

- (1) **Prohibitions.** No credit shall be given for design or construction of site-related road improvements or local roads. No credit shall be given for recreation facilities except pursuant to an independent fee calculation prepared and accepted in accordance with § 2-306(f).
- (2) **Eligibility.** Other approved capital improvements for transportation, regional or community parks, or fire protection may generate corresponding impact fee credits in amounts to be established pursuant to this section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the town.
- (3) **Conditions of credit approval.** Credit for capital improvement construction or land dedication is subject to the following:
 - a. **Construction.** A formal request for impact fee construction credits must include a detailed project description and complete cost estimates prepared by qualified professionals and sufficient to enable the town manager to verify these cost estimates and thereby determine the amount of the credit which the town manager will recommend be authorized by the town council. Construction credits for transportation projects may be given as the town council shall determine on a case-by-case basis if it finds that the granting of such credits will not significantly affect future transportation impact fee collections within the town. The amount of credit shall be limited to the actual verified costs of construction and may be reduced by the percentage to which the capacity of the improvement in question is reasonably expected to be utilized by future development on adjacent lands

owned or controlled by the grantor. This amount then may be further reduced, as the council shall determine, to reflect the council's estimate of the value of the accelerated construction in relation to the town's schedule for construction.

b. **Land dedication.** A formal request for impact fee credits for land dedication must include:

1. A survey of the land to be dedicated, certified by a professional land surveyor duly registered and licensed by the state;
2. A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;
3. An ALTA Form B title insurance policy in an amount equal to the approved value of the credits, to be issued by a company satisfactory to the town attorney and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
4. Property appraisals prepared by qualified professionals that appraise the land as part of the whole development or parent parcel; and
5. A document from the tax collector stating the current status of property taxes on the land.

c. **Valuations.** In preparing their reports, appraisers shall value, except where a dedication is made pursuant to a condition of zoning approval, the land at its then-current zoning and without any enhanced value which could otherwise be attributed to improvements on adjacent lands. If the land in question is subject to a valid agreement, zoning approval or development order which prescribes a different valuation, the agreement, zoning approval or development order shall control. If the dedication is made pursuant to a condition of zoning approval and is not a site-related improvement, and the zoning condition does not specifically prescribe otherwise, the land shall be valued based upon the zoning of the land as it existed prior to the zoning approval which contains the condition of dedication.

- d. **Limitations on credit for land dedications.** The amount of credit which the council may approve shall be limited to the value of the land in question, as determined by the methodology and procedures set out in this section, and may be reduced by the percentage to which the capacity of the improvement in question is reasonably expected to be utilized by future development on adjacent lands owned or controlled by the grantor. This amount then may be further reduced, as the council shall determine, to reflect the council's estimate of the value of the accelerated acquisition in relation to the town's construction schedule.
- e. **Independent determinations.** The town manager retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates and/or property appraisals for those improvements or land dedications. In applicable cases, impact fee credits shall be calculated so as to be consistent with F.S. § 380.06(16) (1997).
- (4) **Timing of credit issuance.** Credits for construction shall be created when the construction is completed and accepted by the appropriate governmental body for maintenance, or when the feepayer posts security, as provided in this subsection, for the costs of such construction. Credits for land dedication shall be created when the title to the land has been accepted and recorded in the official records of the clerk of circuit court. Security in the form of cash, a performance bond, an irrevocable letter of credit or an escrow agreement shall be posted with the town council, made payable to the town in an amount approved by the town manager equal to 110 percent of the full cost of such construction. If the project will not be constructed within one year of the acceptance of the offer by the town, the amount of the security shall be increased by ten percent, compounded for each year of the life of the security. The security shall be reviewed and approved by the town attorney prior to acceptance of the security by the town.
- (5) **Transferability.** Impact fee credits shall be in transferable form and may be sold, assigned or otherwise conveyed. They may be used to pay or otherwise offset the same type of

impact fees required by this article.

- a. Such transferable credits must be used within ~~ten~~ six years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements, which were given in exchange for credits, were recorded in the county's official record book. Credits not used during this period shall expire.
- b. If impact fee rates are increased before the credits are used, the unused transferable credits, when used to pay for the impacts of a particular use listed in impact fee schedule, will be increased at the time they are used in the same percentage that the Consumer Price Index—All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics) increased between the time the credits are used and the time the credits were created. If impact fee rates are decreased, unused transferable credits will not decrease in value.
- c. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, nonrefund provisions and other restrictions prescribed in this article.
- d. Impact fee credits previously issued by Lee County related to development or capital improvements in the town will be accepted as if they were issued by the town, provided the ~~six-year life of those~~ credits have not expired.
- (6) **Withdrawal of offer.** Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question and pay the full impact fees required by this article.

(b) Feepayers claiming credits shall submit documentation sufficient to permit the building official to determine whether such credits claimed are due and, if so, the amount of such credits.

(c) Credits must be claimed by the feepayer at the time of the application for a building permit. Any credits not so claimed shall be deemed waived by the feepayer.

(d) Once used, credits shall be canceled and shall not be reestablished even if the permit for which they were used expires without construction.

(e) Any person seeking credits for dedication of land must meet with the town manager or designee to seek agreement on appraisal methodology and assumptions before preparing any appraisals for valuation of land to be dedicated.

(f) The town may delegate to Lee County certain administrative matters regarding impact fees, pursuant to interlocal agreement.

Sec. 2-314. Appeals.

Any decision made by the town manager or his designee, or by the building official, in the course of administering this article may be appealed in accordance with those procedures set forth in ch. 34 for appeals of administrative decisions.

Sec. 2-315. Enforcement of article; penalty; furnishing false information.

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. A violation of this article shall be punishable according to § 1-5; however, In addition to or in lieu of any criminal or civil prosecution, the county, or any impact fee payer, shall have the power to sue for relief in civil court to enforce the provisions of this article. Knowingly furnishing false information to the town manager, his designee, or the building official on any matter relating to the administration of this article shall constitute a violation thereof.

Secs. 2-316--2-419. Reserved.

ARTICLE V. CODE ENFORCEMENT HEARING EXAMINER

DIVISION 1. GENERALLY

Sec. 2-420. Intent.

(a) The intent of this article is to promote, protect and improve the health, safety and welfare of the

citizens of Fort Myers Beach by using Lee County's code enforcement hearing examiner and granting the power to impose administrative fines, including costs of prosecution, and other noncriminal penalties in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing any code, ordinance, or regulation in effect.

(b) The means of code enforcement described in this article are in addition to those described in § 1-5 of this code and as otherwise allowed by law.

(1) Division 2 of this article describes the use of Lee County's hearing examiner for code enforcement, when so authorized by interlocal agreement.

(2) Division 3 of this article describes the use of civil citations to enforce town codes.

DIVISION 2. HEARING EXAMINER

Sec. 2-421. Creation of position of hearing examiner. *[no change]*

Sec. 2-422. Applicability. *[no change]*

Sec. 2-423. Definitions. *[no change]*

Sec. 2-424. Enforcement procedure. *[no change]*

Sec. 2-425. Conduct of hearing. *[no change]*

Sec. 2-426. Powers of the code enforcement hearing examiner. *[no change]*

Sec. 2-427. Penalties and liens. *[no change]*

Sec. 2-428. Appeals. *[no change]*

Sec. 2-429. Notices. *[no change]*

DIVISION 3. CITATIONS

Sec. 2-430. Citation procedures; penalties. *[no change]*

Sec. 2-431. Conflict. *[no change]*

Sec. 2-432--2-459. Reserved

Exhibit C

PROPOSED AMENDMENTS TO CHAPTER 6 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS¹

ARTICLE IV. FLOODPLAIN REGULATIONS

DIVISION 1. GENERALLY

ARTICLE IV. FLOODPLAIN REGULATIONS

Division 1. Generally

Sec. 6-401. Reserved.

Sec. 6-402. Findings of fact.

Sec. 6-403. Purpose of article.

Sec. 6-404. Objectives of article.

Sec. 6-405. Definitions.

Sec. 6-406. Penalty for violation of article.

Sec. 6-407. Applicability of article.

Sec. 6-408. Basis for establishing flood regulations.

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

Secs. 6-413--6-440. Reserved.

Division 2. Administration

Sec. 6-441. Designation of administrator.

Secs. 6-442--6-443. Reserved.

Sec. 6-444. Applications and certifications.

Sec. 6-445. Appeals.

Sec. 6-446. Variances.

Secs. 6-447--6-470. Reserved.

Division 3. Standards

Sec. 6-471. General standards.

Sec. 6-472. Specific standards.

Sec. 6-473. Repeated damage by flooding.

Sec. 6-474. Standards for subdivision proposals.

Sec. 6-401. Reserved.

Sec. 6-402. Findings of fact.

(a) The Town of Fort Myers Beach is subject to periodic inundation which may result in the loss of life and property, as well as health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated or floodproofed or otherwise unprotected from flood damages.

Sec. 6-403. Purpose of article.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion; and
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

Sec. 6-404. Objectives of article.

The objectives of this article are to:

- (1) Protect human life and health;

¹ **Cross reference(s)**--Development design standards, § 10-251 et seq.; design standards for utilities, § 10-351 et seq.; design standards for fire safety, § 10-381 et seq.; historic preservation, ch. 22; variances from building regulations for historic structures, § 22-175+73; signs, ch. 30; zoning, ch. 34; permit for moving buildings, § 34-3103; nonconforming buildings, § 34-3231 et seq. ~~clearing, grading or filling of land, § 34-3104.~~

- (2) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (3) Minimize prolonged business interruptions;
- (4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains; and
- (5) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas.

Sec. 6-405. Definitions.²

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. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

Addition to an existing building means any walled and roofed expansion that increases the habitable floor space of an existing building to the perimeter of a building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter loadbearing walls is considered new construction.

Appeal means a request for a review of the coordinator's interpretation of any provision of this article. A request for a variance from the precise terms of this article is not an appeal.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Breakaway walls means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building materials, which are not part of the structural support of the building and which

are designed and constructed to collapse under specific lateral loading forces without causing damage to the elevated portion of the buildings or the supporting foundation system on which they are used.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Coastal high-hazard area means the area subject to high-velocity waters caused by ~~storms forces such as but not limited to hurricane wave wash or tsunamis.~~ The area is designated on the flood insurance rate map as zones V1--V30.

Coordinator means Lee County's flood insurance coordinator, who has been designated by the Board of County Commissioners to implement, administer, and enforce the county's floodplain regulations.

Elevated building means a building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

Existing manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots or sites for rent or sale for which the construction of facilities for servicing the lot or site on which the manufactured home is to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets, was completed prior to August 31, 1984.

Expansion to an existing manufactured home park or manufactured home subdivision means the preparation of additional sites by the construction of facilities for servicing the sites on which the manufactured homes are to be affixed, including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.

Flood and *flooding* mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

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

Flood insurance rate map (FIRM) means the official map on file with the coordinator, on which the Federal Emergency Management Agency has delineated both the base flood elevations and coastal high hazard areas (V zones).

Floodproofing means a combination of structural and non-structural features that reduce or eliminate flood damage to buildings and/or their contents. There are two distinct kinds of floodproofing. For dry floodproofing, a building is made watertight up to the base flood elevation and strengthened to resist all hydrostatic and hydrodynamic loads and to counter the effects of buoyancy. For wet floodproofing, damage to a building is avoided by allowing flood waters to temporarily fill the building to equalize loads and prevent buoyancy.

Floor means the top surface of an enclosed area in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of passengers. The term does not include longterm storage, manufacture, sales, or entertainment facilities.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register of Historic Places;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Listed on a local inventory of historic places, either individually or as a contributing structure in a historic district, pursuant to ch. 22 of this code.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. This definition includes mobile homes, as defined in F.S. § 320.01(2), but does not include a recreational vehicle, as defined in F.S. § 320.01(1). However, a manufactured building as defined in F.S. ch. 553, pt. IV is not considered a manufactured home.

Market value of the structure, depending on the context, means either:

- (1) the value of the structure building prior to the start of the improvement, or
- (2) in the case of damage, the value of the structure building prior to the damage occurring.

Value will be as determined (for the structure only) by the Lee County Property Appraiser or by a private appraisal acceptable to the coordinator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements on the site, nor the value of the structure after the proposed improvements are completed. Any proposed value submitted via private appraisal is subject to peer review by a qualified local appraiser, to be commissioned by the coordinator at town expense.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, to which base flood elevations shown on the flood insurance rate map are referenced.

National Geodetic Vertical Datum (NGVD), as corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means structures for which the start of construction commenced on or after May 1, 1990, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be

affixed, including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, is completed on or after August 31, 1984.

Reconstruction means an improvement to an existing building that substantially replaces all or a portion of an existing building with a new building, or physically moves an existing building to a different location.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) Five hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Registered architect means an architect registered or licensed by the state of Florida to practice architecture, or who is authorized to practice architecture in Florida under a reciprocal registration or licensing agreement with another state.

Registered professional engineer means an engineer registered or licensed by the state of Florida to practice engineering, or who is authorized to practice engineering in Florida under a reciprocal registration or licensing agreement with another state.

Registered land surveyor means a land surveyor registered or licensed by the state of Florida to practice land surveying, or who is authorized to practice surveying in Florida under a reciprocal registration or licensing agreement with another state. This term includes professional surveyors and mappers registered by the state of Florida.

Rehabilitation means an improvement to an existing building that does not expand its external dimensions.

Repair means the replacement or renewal of nonstructural elements of an existing building.

Reinforced pier means a system designed and sealed by a state-registered architect or engineer

which is an integral part of a foundation and anchoring system for the permanent installation of a manufactured home or recreational vehicle, as applicable, so as to prevent flotation, collapse or lateral movement of the manufactured home or recreational vehicle due to flood forces. At a minimum, a reinforced pier would have a footing adequate to support the weight of the manufactured home or recreational vehicle under saturated soil conditions such as occur during a flood. In areas subject to high-velocity floodwaters and debris impact, cast-in-place reinforced concrete piers may be appropriate. Nothing in this division shall prevent a design which uses pilings, compacted fill or any other method, as long as the minimum flood and wind standards are met.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Structure means a walled and roofed building that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred (actual repair work need not have been performed on all flood-related damage).

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvements to a structure when the cost of the improvement or repair equals or exceeds, over any five-year period, a cumulative total of 50 percent of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged and is being restored, before the damage occurred. The term substantial improvement includes structures which have incurred substantial damage; (However, for structures that have incurred "substantial damage" as defined in this article, regardless of the actual repair work performed, the term "substantial

improvement” includes any additions, reconstruction, and rehabilitation of the structure, but does not include the cost of nonstructural interior finishings as defined herein.) The term “substantial improvement” does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) costs of nonstructural interior finishings, including, but not limited to, finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters, or roof coverings; or
- (3) costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided they do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or shatterproof glass, strengthening of roof attachments, floors, or walls, and minor floodproofing; or
- (4) any alteration of a structure listed on the National Register of Historic Places or designated under ch. 22 of this code as a historic resource (individually, or as a contributing property within a historic district), historic structure, provided that the alteration does not cause the structure to lose its historic designation.

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Sec. 6-406. Penalty for violation of article.

~~Any person violating any provision of this article shall be prosecuted and punished as provided by § 1-5.~~

The director and the coordinator are 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.

Sec. 6-407. Applicability of article.

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

Sec. 6-408. Basis for establishing flood regulations.

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency. Their maps illustrating the minimum federal floodplain regulations as adopted on September 19, 1984, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Administration Building, 2115 Second Street, Fort Myers, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

<i>General area shown</i>	<i>Panel number</i>	<i>Latest</i>
Bowditch – Donora	125124 0429D	9/20/96
Donora – Gulfview	125124 0433B	9/19/84
Gulfview – Flamingo	125124 0441B	9/19/84
Flamingo – Buccaneer	125124 0442C	7/20/98
Buccaneer – Big Carlos	125124 0444D	7/20/98

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Secs. 6-413--6-440. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 6-441. Designation of administrator.

Lee County's flood insurance coordinator ("coordinator") is hereby appointed to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

Secs. 6-442--6-443. Reserved.

Sec. 6-444. Applications and certifications.

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed; and
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed.

(b) A permit holder must submit to the coordinator a floor elevation or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

- (1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the coordinator a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by a registered land surveyor or professional engineer.
- (2) When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by a registered professional engineer or architect.
- (3) Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk.

(c) The coordinator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required by this section shall be cause to issue a stop work order for the project.

Sec. 6-445. Appeals.

Any affected person may file an appeal alleging that there has been an error in any requirement, decision or determination made by the coordinator in the enforcement or administration of this article. Such appeals shall be processed and decided in the

same manner as for appeals under ch. 34 of this code.

Sec. 6-446. Variances.

(a) Variances from base flood elevation requirements may only be granted upon a clear showing by the applicant that an exceptional hardship would result from compliance with the requirements. If a variance is granted, the coordinator shall notify the applicant, in writing, that:

- (1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
- (2) Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

(b) Variances shall only be granted upon a determination, based upon competent substantial evidence presented by the applicant, that:

- (1) It will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing regulations or ordinances; and
- (2) The lot or parcel in question is so small or has such unusual characteristics that the prescribed standards cannot be met without some relief so as to allow a reasonable use of the property.

(c) Variances shall only be issued upon a determination that the variance being granted is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued for repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(e) Variances may be issued to allow non-residential buildings other than those already

identified in § 6-472(5) to contain wet-floodproofed space below the base flood elevation, provided:

- a. the building is not in the coastal high-hazard areas; and
- b. such action is determined to be in the public interest.

Any such buildings must meet the technical standards for wet floodproofing found in § 6-472(5).

(f) A variance is a deviation from the exact terms and conditions of this article. Requests for variances shall be processed and decided in the same manner as for variances under ch. 34 of this code.

(g) In passing upon variance applications, the town council shall consider all technical evaluations, all relevant factors including local and federal policies on flood protection, all standards specified in this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, in the case of a functionally dependent facility;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas,

electrical and water systems, and streets and bridges.

(h) Upon consideration of the factors listed in subsection (g) of this section and purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

Secs. 6-447--6-470. Reserved.

DIVISION 3. STANDARDS

Sec. 6-471. General standards.

The following general standards must be followed within the Town of Fort Myers Beach:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding. Utility equipment shall be exempt from this requirement as long as the utility company which owns the equipment accepts the sole responsibility for any flood damage to the equipment by filing written acceptance of such responsibility with the local building director prior to claiming the exemption;
- (6) All new and replacement water supply systems shall be designed to minimize or

eliminate infiltration of floodwaters into the system;

- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
- (8) Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this article shall meet the requirements of new construction as contained in this article.

Sec. 6-472. Specific standards.

The following specific standards must be followed within the Town of Fort Myers Beach:

- (1) ***Conventional residential construction.*** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
 - a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement's cost exceeds the 50 percent threshold in this article's definition of "substantial improvement," then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
 - b. Some partial reconstructions or additions to existing residential structures may fall below the 50 percent threshold and are therefore not considered to be "substantial improvements." In this situation:
 1. If the structure was approved after 1984 and thus was elevated in accordance with this code, the reconstructed or additional habitable floor space shall also be elevated the same as new construction, with its lowest floor at or above the base

flood elevation. Any enclosed space below the base flood elevation shall be subject to the same restrictions that apply to post-1984 structures as found in subsection (5) of this section.

2. If the structure was approved before 1984, the reconstructed or additional habitable floor space must be elevated to or above the elevation of the structure's existing lowest habitable floor. Any enclosed space below the structure's existing lowest habitable floor shall be subject to the same restrictions that apply to post-1984 structures as found in subsection (5) of this section. For purposes of this subsection only, "existing lowest habitable floor" does not include enclosed space of less than 500 square feet below an elevated structure and does not include any space that has been used to park vehicles.

(2) **Manufactured homes.** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved, ~~on a site located in an existing manufactured home park or subdivision, they must be either:~~

- a. on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation, or
- b. on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above grade, and the manufactured home shall comply with the anchoring requirements of § 6-471(2). However, the 36-inch alternative in subsection (2)b. may not be used if a manufactured home on that specific site has incurred "substantial damage" from flooding, as defined in this article, as a result of a flood.

(3) **Recreational vehicles.** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:

- a. placed on the site for fewer than 180 consecutive days and fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions); or
- b. elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation.

(4) **Nonresidential construction.** New construction or substantial improvement of any commercial or other nonresidential structure shall either:

- a. have the lowest floor elevated to or above the base flood elevation, or,
- b. together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 1. Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map's Pedestrian Commercial category.
 2. A registered professional engineer or architect shall certify that the dry-floodproofing standards of this subsection are satisfied. Such certification shall be provided to the coordinator.

(5) **Space below elevated buildings (A zones).** New construction or substantial improvements of ~~non-residential~~ elevated buildings, both residential and ~~elevated non-~~

residential buildings may contain space below the base flood elevation that is usable solely for parking, building access, or storage (except in additional restrictions for coastal high-hazard areas which are regulated by are provided in subsection (7) below).

a. The amount of such space is limited only by setback and other regulations of ch. 34 provided the space is not enclosed or is enclosed only by latticework or decorative screening with less than 50 percent solid surfaces. This 50 percent enclosure rule can also be met with full-height solid walls that enclose no more than 50 percent of the perimeter of the floor area, or with partial-height solid walls that extend less than 50 percent of the height of all walls, or any equivalent combination. For purposes of this rule, operable doors and windows shall be considered solid surfaces.

b. In addition to the unenclosed or 50 percent enclosed space described in subsection a., space below the base flood elevation These areas, which may include garages and fully enclosed areas formed by foundation and other exterior walls provided that this space is below the base flood elevation, shall be wet-floodproofed, designed to preclude finished living space in the area below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on such exterior walls below the base flood elevation. Fully enclosed areas must comply with all setback requirements for the zoning district in which located. Fully enclosed space below the base flood elevation cannot extend beyond the perimeter of the elevated structure.

a. 1. Designs for complying with this requirement must either be certified by a registered professional engineer or architect, or meet the following minimum criteria:

†. -a- A minimum of two openings shall be provided having a total net area of not less than one square inch for every square foot

of enclosed area subject to flooding;

2. -b- The bottom of all openings shall be no higher than one foot above grade; and
3. -c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- b. 2. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation.
- e. 3. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage or other overhead door), or limited storage of maintenance equipment used in connection with the premises (standard exterior door with no more than a single door opening of up to 36 inches in any single wall segment, or windowless double exterior doors with no more than 72 inches of opening in any single wall segment), plus internal or entry to the living area (stairway or elevator).
- d. 4. The interior portion of such enclosed area shall not be partitioned or finished into separate habitable rooms.
- e. 5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water.
- f. 6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e), and may include functionally dependent facilities, historic buildings, and utility structures.
7. Any application for a garage or other enclosed area formed by exterior walls below the base flood elevation must be accompanied by a

signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space, using a form provided by the coordinator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

(6) **Accessory structures.** Accessory structures may be exempted from meeting the elevation requirements only if:

- a. The structure is securely anchored to resist flotation or lateral movement; and
- b. The total cost of the structure does not exceed \$16,000 or 10% of the value of the principal building, whichever is greater; and
- c. The structure is used exclusively for nonhabitable recreational, security, or storage purposes; and
- d. All electrical or heating equipment is elevated above the base flood elevation or floodproofed; and
- e. For accessory structures located in coastal high-hazard zones (V zones), breakaway walls are used below the base flood elevation.

(7) **Coastal high-hazard areas (V zones).**

Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply:

- a. All new construction shall be located landward of the reach of the mean high tide line.
- b. All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection (7)h of this section.

c. Some partial reconstructions or additions may fall below the 50 percent threshold and are therefore not considered to be “substantial improvements” as defined by this chapter. In this situation:

1. If the structure was approved after 1984 and thus was elevated in accordance with this code, the reconstructed or additional habitable floor space shall also be elevated the same as new construction in V zones. Space below this elevation shall be subject to the same restrictions as for new structures.
 2. If the structure was approved before 1984, the reconstructed or additional habitable floor space shall be elevated to or above the elevation of the structure’s existing lowest habitable floor. Any enclosed space below the structure’s existing lowest habitable floor shall be subject to the same restrictions as for new structures in V zones. For purposes of this subsection only, “existing lowest habitable floor” does not include enclosed space of less than 500 square feet below an elevated structure and does not include any space that has been used to park vehicles.
- c. d. All new construction and substantial improvements shall be securely anchored on pilings or columns.
- d. e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values which equal or exceed the 100-year mean recurrence interval (one percent annual chance flood).
- e. f. Compliance with the provisions contained in subsections (7)b, ~~e~~ and d, and e of this section shall be certified by a registered professional engineer or architect.
- f. g. There shall be no fill used as structural support.

- ~~g.~~ h. There shall be no damage to existing sand dunes.
- ~~h.~~ i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:
 1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
 2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event. Water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Wind loading values shall be those required by local and state law.
- ~~i.~~ j. If breakaway walls are utilized, such enclosed space shall not be used for human habitation, but shall be designed to be used only for parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5)a. and (5)b. above.

- ~~j.~~ k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the coordinator for approval.
- ~~k.~~ l. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with breakaway walls, and except as provided for in the remainder of this subsections (7)h and i of this section.
- ~~l.~~ m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.

Sec. 6-473. Repeated damage by flooding.

Buildings previously damaged by flooding, evidenced by one or more flood losses greater than \$1,000 paid by the National Flood Insurance Program ~~between~~ after 1978 ~~and 1998~~, shall be brought into compliance with the standards in this article if they are flooded again and claim a flood loss greater than \$5,000.

Sec. 6-474. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities such as sewers, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for all subdivision and development proposals.

Exhibit D

PROPOSED ADOPTION OF CHAPTER 14 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 ENVIRONMENT AND NATURAL RESOURCES¹

~~ARTICLE I. IN GENERAL~~ BEACH AND DUNE MANAGEMENT

- Sec. 14-1. Definitions.
Sec. 14-2. Purpose and intent.
Sec. 14-3. Destruction or diminishment of dune or beach system.
Sec. 14-4. Trash and litter on the beach.
Sec. 14-5. Beach furniture and equipment.
Sec. 14-6. Beach raking and wrack line policy.
Sec. 14-7. Vehicular traffic on the beach.
Sec. 14-8. Dune systems.
Sec. 14-9. Enforcement.
Sec. 14-10. Restoration standards for dune vegetation alteration violations.
Sec. 14-11. Special events on the beach.
~~Secs. 14-12--14-70.~~ Reserved.

ARTICLE II. SEA TURTLE CONSERVATION ~~WILDLIFE AND HABITAT PROTECTION~~ Division 1. Generally

- ~~Secs. 14-41--14-70.~~ Reserved.
Division 2. Sea Turtles
Sec. 14-71. Purpose and applicability of division.
Sec. 14-72. Definitions.
Sec. 14-73. Enforcement of division; penalty.
Sec. 14-74. Exemptions from division.
Sec. 14-75. Existing development.
Sec. 14-76. New development.
Sec. 14-77. Publicly owned lighting.
Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.
Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.
~~Secs. 14-80--14-110.~~ Reserved.

ARTICLE III. SOUTHERN BALD EAGLE PROTECTION ~~WELLFIELD PROTECTION~~ [deleted]

~~Division 3. Southern Bald Eagle~~

- ~~Sec. 14-111. Purpose of division.~~
~~Sec. 14-112. Definitions.~~
~~Sec. 14-113. Violation of division; penalty.~~
~~Sec. 14-114. Provisions of division supplemental.~~
~~Sec. 14-115. Applicability of division.~~
~~Sec. 14-116. Eagle technical advisory committee.~~
~~Sec. 14-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.~~
~~Sec. 14-118. Notification procedure.~~
~~Sec. 14-119. Mechanisms for the protection of critical eagle nesting habitat.~~
~~Sec. 14-120. Compensation incentives for protection of critical eagle nesting habitat.~~

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

~~Division 4. Manatee Protection; Caloosahatchee River System~~ [deleted]

ARTICLE IV. WETLANDS PROTECTION Division 1. Generally

- ~~Sec. 14-291. Applicability. Findings of fact.~~
~~Sec. 14-292. Purpose of article.~~
~~Sec. 14-293. Definitions.~~
~~Sec. 14-294. Prohibited activities. Penalty for violation of article.~~
~~Sec. 14-295. Permitted activities. Conflicting provisions.~~
~~Sec. 14-296. Permits required. Repeater; applicability of previous ordinance.~~
~~Sec. 14-297. Compliance enforcement. Existing development orders and approvals.~~
~~Sec. 14-298. Permitted and prohibited uses and development.~~
~~Sec. 14-299. Standards for permitted development.~~
~~Sec. 14-300. Restoration standards.~~
~~Secs. 14-301--14-330.~~ Reserved.
Division 2. Administration and Enforcement
~~Sec. 14-331. Site plan review.~~
~~Sec. 14-332. Variances and deviations generally.~~

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.

- ~~Sec. 14-333. Administrative deviation for existing subdivisions.~~
~~Sec. 14-334. Violations.~~
~~Sec. 14-335. Stop work orders.~~
 Secs. 14-298 336--14-370. Reserved.

ARTICLE V. TREE PROTECTION

Division 1- Generally

- ~~Sec. 14-371. Reserved. Short title.~~
~~Sec. 14-372. Findings of fact.~~
~~Sec. 14-373. Intent and purpose of article.~~
~~Sec. 14-374. Definitions.~~
~~Sec. 14-375. Penalty for violation of article.~~
~~Sec. 14-376. Prosecution of violations.~~
~~Sec. 14-377. Exemptions from article.~~
~~Sec. 14-377. Indigenous vegetation.~~
~~Sec. 14-378. Suspension of article during emergency conditions.~~
~~Sec. 14-379. Nonliability of town county.~~
~~Sec. 14-380. List of protected trees.~~
~~Sec. 14-381. Unlawful injury of trees.~~
~~Sec. 14-382. Removal of protected trees.~~
~~Sec. 14-383. Tree protection during development of land.~~
~~Sec. 14-384. Restoration standards.~~
 Secs. 14-385--14-410. Reserved.

Division 2- Administration and Enforcement

- ~~Sec. 14-411. Permit required.~~
~~Sec. 14-412. Issuance of permit.~~
~~Sec. 14-413. Variances.~~
~~Sec. 14-414. Inspections, notice of violation.~~
~~Sec. 14-415. Stop work orders.~~
 Secs. 14-4136--14-450. Reserved.

ARTICLE VI. MANGROVE PROTECTION ENFORCEMENT

- ~~Sec. 14-451. Purpose and intent of article.~~
~~Sec. 14-452. Definitions.~~
~~Sec. 14-453. Enforcement of article, penalties.~~
~~Sec. 14-454. Restoration standards.~~
~~Sec. 14-455. Permit required.~~
~~Sec. 14-456. Conflicting provisions.~~
~~Sec. 14-457. Repeater, applicability of previous ordinance.~~

ARTICLE I. IN GENERAL
BEACH AND DUNE MANAGEMENT²
 [relocated from Ordinance No. 00-10]

Sec. 3 14-1. Definitions.

For the purposes of this article Ordinance, 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 has the same meaning given it in § 14-72. means the soft sand portion of land lying seaward of a seawall or seaward line of vegetation and landward of the mean low water line.

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, and lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddles vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

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, or 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 characterized by the presence of 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

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

specified as suitable for establishment of dune vegetation. ~~In the absence of a discernible dune structure, the seaward boundary of a dune will be deemed to be the seaward line of vegetation.~~

~~*Dune vegetation, or common native dune vegetation* means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow is typically to be found 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 morningglory, 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.~~

~~*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.~~

~~*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.~~

~~*Wrack* means the natural organic marine material cast on the shore, including seaweed and other vegetative and animal debris, but excluding manmade material.~~

Sec. 4 14-2. Purpose and intent, of the Ordinance.
~~The Town council finds and declares:~~

(a) ~~The purpose of this article the Dune & Beach Management Plan is:~~

- (1) To encourage a steward-like attitude toward the town's our most valuable asset, the our beach.
- (2) To preserve and improve the condition of that asset as a place for recreation, solitude,

and preservation of ~~our~~ beach vegetation and marine wildlife.

(b) ~~This article The Dune & Beach Management Plan~~ provides minimum standards to safeguard the beach.

Sec. 5 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 § 6 14-4);
- (5) deposit and leave human or animal waste (see § 6 14-4);
- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 8 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 § 9 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 ~~the land development~~ this code for any of the above activities, the standards and procedures for issuance shall be governed by ~~the land development~~ this code.

Sec. 6 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 § 5 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 ~~Special~~ Special permit through Town Hall. The ~~special~~ special permit will require a \$30.00 deposit for cleanup.

Sec. 7 14-5. Beach furniture and equipment.

(a) From May 1 ~~until~~ 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 7 § 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.

(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 a 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. 8 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 the 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. Town approval is necessary for determination that health or safety issues have been confirmed that would allow:

- (1) A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.
- (2) If health or safety issues are present such as a large fish kill or a red tide event, the wrack line may be raked up to 10 feet landward of the normal high tide line.
- (3) 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 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, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners, the

dimensions of the area to be raked, and the location of existing vegetation and structures.

- (2) Prior to the granting or denying of the application, the director 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.
- (3) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.
- (4) 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 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 (see requirements in § 14-74(b)).

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, please contact the FWC, Bureau of Protected Species Management, at (561) 575-5407.

- 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 = vehicle weight in pounds (includes person and equipment) divided by the footprint in square inches
 - b- EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 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. 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.

7. 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. 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.

Sec. 9 14-7. Vehicular traffic on the beach.

(a) All engine powered vehicles shall obtain a DEP prior to driving a vehicle on the beach. The DEP permits must specify that the tires create a maximum pressure of ten (10) p.s.i. where the tire makes contact with the sand.

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). (b) 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 (4) 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) (a) 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) (b) 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, hearing examiner, 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 hearing examiner, 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.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or hearing examiner, 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 hearing examiner.

(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 Protected Species Management, at (561) 575-5407.
- 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--14-7040. Reserved.

**ARTICLE II. ~~WILDLIFE AND~~
HABITAT PROTECTION
SEA TURTLE CONSERVATION**

~~DIVISION 1. GENERALLY~~

~~Secs. 14-41--14-70. Reserved.~~

~~DIVISION 2. SEA TURTLES~~

Sec. 14-71. Purpose and applicability of division.

The purpose of this article division is to protect endangered and threatened sea turtles along the Gulf of Mexico beaches in the Town of Fort Myers Beach. This article division 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 division.

Sec. 14-72. Definitions.

When used in this article division, 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:

Administrator [deleted]

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

Beach means that area of ~~unconsolidated material 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, as more particularly described in appendix B.

Bug type 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 ~~of a~~ 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 cleaning* means the act of cleaning the beach with a motor-powered vehicle and beach cleaning equipment that does not penetrate deeper than two inches into the surface of the beach, or what may be approved by the DEP following a storm.~~

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, ~~permittee of the DEP.~~

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), ~~and~~ *Dermochelys coriacea* (leatherback), *Eretmochelys imbricata* (hawksbill), and *Lepidochelys kempi* (Kemp's ridley). For purposes of this article division, 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 of division; 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) (a) *Violations.* (1) Failing in any respect to comply with the provisions of this division. (2) A rebuttable presumption that there is a violation of this article division exists when:~~

- ~~(1) a:~~ 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) b:~~ 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.

~~(b) *Enforcement and penalty.* Violations of this division will be prosecuted in accordance with ch. 2, article VII. The Town of Fort Myers Beach may take action against the property owner, occupant, or person otherwise responsible for causing the violation. In addition to code enforcement action, the town may pursue other legal means of obtaining compliance, including civil and criminal remedies, that are available by law.~~

Sec. 14-74. Exemptions from division.

[subsections (a), (b), and (c) moved to § 14-78(b)]

~~(d) *Administrative exemptions.* The town manager may authorize, in writing, any activity or use of lighting otherwise prohibited by this article division 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. ~~and~~

(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~~ division.

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) ~~(a)~~ The beach must not be directly or indirectly illuminated by newly installed or replaced point sources of light.
- (2) ~~(b)~~ 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: allowed under § 14-74(a).~~

[subsections (1), (2), and (3) moved from § 14-74]

- (1) ~~(a)~~ **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 so long as appropriate red-colored filters are used to ensure no more artificial lighting than that necessary for the safe operation of their vehicles is visible.

- (2) ~~(b)~~ **Mechanical beach cleaning raking.** All mechanical beach raking requires a town permit in accordance with § 14-6(c). During the nesting season, mechanical beach ~~cleaning raking:~~

- a. must not occur before ~~10:00~~ 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
- 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) (c) **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 requires a valid DEP permit authorizing jet-ski transport within the riparian line of the licensed property to the water, and
- c. must not occur before ~~10:00~~ 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 next 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 PROTECTION³
WELLFIELD PROTECTION**

*[existing article III on wellfield protection
deleted in its entirety]*

DIVISION 3. SOUTHERN BALD EAGLE

Sec. 14-111. Purpose of division.

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 in the county can be maintained and increased. This article division 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 division is also intended to provide information and assistance to property owners to enable them to avoid violations of state and federal law. ~~The landowner has the opportunity to choose one of several options. One can do an eagle management plan which should assist significantly in the state and federal permitting process; one can bypass this division and deal directly with the state and federal governments; or one can do nothing and take the chance of being in violation of state and federal law.~~

Sec. 14-112. Definitions.

The following words, terms and phrases, when used in this article division, 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 by the ~~board of county commissioners~~ 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 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 FGFWFC means the Florida ~~Game and Fresh Water~~ 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.

Nesting period ~~[deleted]~~

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

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

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

Southern bald eagle (Haliaeetus leucocephalus); ~~as per the federal and state threatened species list,~~ 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 ~~division~~, 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 of ~~division~~; 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. Any person convicted of violation of any of the provisions of this division may be punished as provided in § 1-5. Such person will also be responsible for costs and expenses involved in the case. Each day such violation continues will be considered a separate offense.

(b) Any violator of this article ~~division~~ 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 county may take necessary corrective action, the cost of which will be placed as a lien upon the property.

(c) ~~In addition, any violation of this division is a public nuisance and may be restrained by injunction by any interested party.~~

Sec. 14-114. Provisions of ~~division~~ supplemental.

(a) This article ~~division~~ 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 of ~~division~~.

~~This division will apply unless, prior to commencement of development which is subject to conditions imposed under this division, where applicable, the property owner elects, in writing, not to participate. This article division applies only to all real property within 750 feet of a nest until such time as unless 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 ~~The county~~ eagle technical advisory committee (ETAC) ~~will consist of five residents of the county appointed by the board of county commissioners 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. Each eagle technical advisory committee member should have extensive technical or practical knowledge of the southern bald eagle biology and must be qualified by either training or experience to render advice regarding the protection of critical southern bald eagle nesting habitat.~~

(b) ~~The term of office for a member of the eagle technical advisory committee will be two years; however, so as to provide for staggered terms, two members will be appointed initially to one-year terms, and the remaining three members to two-year terms.~~

~~(c) The eagle technical advisory committee will review all pertinent or current eagle technical documents and provide expert advice to the board of county commissioners, the department of community development and the general public.~~

~~(d) The eagle technical advisory committee will review management plans and make recommendations to the board of county commissioners in accordance with § 14-119.~~

~~(e) The county department of community development, division of natural resources management, with assistance from the county attorney's office will serve as support staff to the eagle technical advisory committee.~~

~~(f) The eagle technical advisory committee will determine occupancy of southern bald eagle nests not included on FGFWFC's annual southern bald eagle nesting survey.~~

~~(g) The eagle technical advisory committee, with assistance of appropriate staff, will maintain and update as necessary a list or map of occupied southern bald eagle nests and will monitor nest sites on a regular basis, with the permission of the property owner, if required.~~

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

(a) The town county 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 county 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. ~~All funds received and the earnings from such funds will be escrowed in a special account for use in the acquisition of critical eagle nesting habitat or the purchase of conservation easements.~~

Sec. 14-118. Notification procedure.

~~Lee County~~ The town will notify the FWC FGFWFC 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 division is applicable where such conditions are deemed necessary by the director ~~of the department of community development (or designee)~~ to prevent a "take" of the eagle, as that term is defined in FAC rule 39-1.004(77).

~~(b) *Agricultural activities.* All persons intending to conduct agricultural activities on property to which this division is applicable are encouraged to consult with the eagle technical advisory committee prior to submittal of an application for a notice of clearing or the commencement of clearing activities.~~

(b) ~~(e)~~ All other development.

- (1) All persons contemplating the development of property to which this ~~article~~ division is applicable are encouraged to consult with the county's eagle technical advisory committee and its supporting staff ~~the division of natural resources management~~ 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 ~~Lee County staff and~~ the eagle technical advisory committee prior to approval by resolution of the town council ~~board of county commissioners~~.
- (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) ~~The eagle technical advisory committee will consider the guidelines promulgated by FGFWFC and the U.S. Fish and Wildlife Service in the review of management plans and may request technical assistance from the FGFWFC or the U.S. Fish and Wildlife Service whenever necessary.~~
- (7) 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), provided, however, that nothing in this section shall be construed to impair the value of incentives that were previously approved by the board of county commissioners pursuant to Ordinance No. 86-15.~~

~~(b) In addition to the incentives already provided herein, in the event that the board of county commissioners if the town council elects not to acquire a critical eagle nesting habitat, then the town council board 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: ~~For a buffer area composed of a resource protection area or transition zone, or portion thereof, the following internal transfer of density shall apply:~~

- ~~1. Resource protection area: One development right per ten acres;~~
 - ~~2. Transition zone: One development right per five acres; 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 shall be granted:
- a. The town may county shall waive the zoning application fee on the subject property, and, if applicable, one other parcel under unified control;
 - b. The town may county shall waive building permit application fees on the subject property, and, if applicable, one other parcel under unified control; and
 - c. The town may county shall 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 shall be granted: The town may county shall 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 same regional park impact fee district. 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 county 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 division.
- (6) In no event shall the amount of fees waived or credited set forth in subsections (2) and (3) of this section exceed ~~twice~~ the appraised value of the buffer area conveyed to the county. 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 county administrator.

Secs. 14-121--14-290, 150: Reserved.

**~~DIVISION 4. MANATEE PROTECTION;
CALOOSAHATCHEE RIVER SYSTEM*~~**

[deleted in its entirety]

ARTICLE IV. WETLANDS PROTECTION

~~Secs. 14-291–14-370:~~

[existing article IV deleted in its entirety]

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 PROTECTION⁴

DIVISION 1. GENERALLY

Sec. 14-371. Short title: Reserved.

~~This article shall be known and may be cited as the "Lee County Tree Protection Ordinance."~~²

Sec. 14-372. Findings of fact.

The town council ~~board of county commissioners~~ hereby finds and determines that trees promote the health and general welfare of the citizens of the town ~~county~~, 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 ~~countywide~~ soil conservation, erosion control, and flood control;
- (4) Trees are an invaluable amenity ~~to the county~~, providing shade and cooling the air and land, and reducing noise levels and glare;
- (5) The protection of trees ~~within the county~~ is not only desirable, but essential to the health, safety, and welfare of all the citizens, present and future, of the town; ~~county~~; and
- (6) Some trees are more beneficial than others as necessary contributions to the town's ~~county's~~ environment, and it is not necessary to protect each and every tree in order to attain the publicly beneficial results of a tree protection; ~~and ordinance~~.
- (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 of article.

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

- (1) aid in the stabilization of soil by the prevention of erosion and sedimentation;

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

- (2) reduce stormwater runoff and costs associated therewith and maintain permeable land areas for ~~aquifer recharge and~~ surface water filtration;
- (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 county's~~ physical and aesthetic environment; and
- (11) generally protect and enhance the quality of life and the general welfare of the town county.

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

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.

~~*Bona fide agricultural purposes* [deleted]~~

~~*Commission* [deleted]~~

~~*County* [deleted]~~

~~*Critical areas for surface water management* [deleted]~~

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

~~*Director Administrator* means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee, administrative director of the department of community development or his or her designee, who is the person responsible for administering the provisions of this article.~~

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 of the county, as listed in § 10-701.~~

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

~~*Massing of trees* means to cluster trees in a random fashion.~~

~~*Notice of clearing* means the permit issued by the administrator after it has been recorded by the clerk's office.~~

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 administrator.

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.

Resource protection area [deleted]

Transition zone [deleted]

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, and as listed in § 14-380(c), appendix E. For the purpose of this article, those palms listed in § 14-380(c) on appendix E are declared to be a tree and are protected by the provisions of this article.

Tree location protection 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.

Tree worthy of preservation [deleted]

Upland means land other than wetlands resource protection areas or transition zones.

(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 of article.

(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.

(a) ~~Any person, organization, society, association, or corporation, or any agent or representative thereof, who violates any provision~~

of this article shall, upon conviction, be subject to the following penalties:

(1) ~~Criminal penalties.~~ Such person shall be punishable as provided in § 1-5.

(2) ~~Civil penalties.~~ The following shall be applicable:

a. ~~Injunctive relief to enjoin and restrain any person from violating the provisions of the article;~~

b. ~~A fine not to exceed \$500.00 per violation;~~

c. ~~Revocation, suspension or amendment of any land development permit granted pursuant to this article;~~

d. ~~Restoration pursuant to the standards contained in § 14-384.5; and~~

e. ~~Any other relief available pursuant to law.~~

(b) ~~Any equitable, legal, or leasehold owner of property who knew, or should have known, that illegal removal of trees was occurring on property in which that individual has any equitable, legal, or leasehold interest, and who permitted that activity to occur without notifying the administrator of the person, organization, society, association or corporation, or any agency or representative thereof, of the improper or illegal removal of the protected trees, shall be equally subject to any civil or criminal penalty set forth in this article.~~

(b) ~~(c)~~ 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. Prosecution of violations.

~~Prosecution of violations of this article shall be before the court, the county code enforcement board or the hearing examiner.~~

Sec. 14-377. Exemptions from article.

(a) This article shall not apply to the following:

(1) ~~Removal of trees on the following lands as specified in this subsection:~~

a. ~~This article shall not apply to the removal of trees, other than trees worthy of preservation, on lands classified as agricultural land for ad valorem taxation purposes... [deleted in its entirety]~~

- b. ~~Removal of trees on land which is used for agricultural purposes and which is exempt from the provisions of this article and which meets the criteria of or has been designated as a resource protection area or transition zone shall be subject to the provisions of article IV of this chapter.~~
- c. ~~[relocated to § 14-377(a)]~~
- d. ~~[relocated to § 14-377(b)]~~
- (1) ~~(2) **Trees in rights-of-way.** The removal of trees on public rights-of-way conducted by or on behalf of a federal, state, county, municipal or other 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) ~~(3) **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.~~
- (4) ~~The removal of trees by duly constituted communication, water, sewer or electrical utility companies or federal, state or county agency, engineer or surveyor, working under a contract with such federal, state or county agency or when such tree removal is done as a governmental function of such agency.~~
- (3) ~~(5) **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) ~~(6) **Surveying activities.** The removal of trees protected by this article, other than a tree worth of preservation, 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 administrator prior to such a removal and clearance.~~

- (5) ~~(7) **Subdivided lots.** The removal of up to three protected trees during any one-year period on a lot zoned for single-family residential use that is or being used lawfully as a single-family residence or mobile home, where the residence or proposed residence is located on a lot no greater than five acres in area. However, all other lots that are vacant or have a building that is being replaced are subject to the provisions of § 14-382(c).~~
- (8) ~~The removal of protected trees, other than a tree worthy of preservation, on the premises of a licensed plant or tree nursery or tree farm where such trees are intended for sale in the ordinary course of the licensee's business.~~

~~(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).~~

~~(b) Any final development order or other final approval issued by the county which was granted after January 27, 1983, but before the effective date of the ordinance from which this article is derived may, at the discretion of the administrator, be exempted from compliance with this article, to the extent that the restrictions imposed by this article conflict with the approvals given in the final development order or other final approval, in which case the final development order or other final approval shall supersede this article as to those areas in conflict.~~

~~(c) However, the exemptions herein for agriculturally zoned land, agricultural lands classified as exempt pursuant to F.S. § 193.461(3)(b), and single-family lots shall not apply to land within 25 feet of the Orange River, which is also within the Buckingham Sector Plan Area, as defined in Goal 19 of the Lee Plan. This provision shall sunset two years from the effective date of this article.~~

Sec. 14-377. Indigenous vegetation. *[moved from § 14-377(a)(1)c. and d.]*

~~(a) c. If the property is located in the critical areas for surface water management, and is not used for bona fide agricultural purposes, 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~~ administrator 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~~ administrator, or the property owner with the ~~director's~~ administrator's approval, shall develop a management plan based on the criteria set forth in § 10-474. Preparation and review criteria for the plan shall 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, ~~division 3~~, of this chapter.

~~(b) d. If the property is located in the critical areas for surface water management, Indigenous vegetation shall not be cleared within 25 feet of the mean high-water line or ordinary high-water line, whichever is applicable, of any natural waterway, listed in appendix F. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to this code, applicable county ordinances.~~

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~~ administrator 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 county.

Nothing in this article shall be deemed to impose any liability upon the town county 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) ~~appendix E~~ 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~~ 378.

(b) All other species of trees not named in § 14-380(c) ~~appendix E~~ 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

<i>Scientific Name</i>	<i>Common Name</i>
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ACERACEAE (MAPLE FAMILY)

Acer rubrum	Red Maple
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ANACARDIACEAE (CASHEW FAMILY)

Rhus copallina	Southern Sumac
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ANNONACEAE (CUSTARD-APPLE FAMILY)

Annona glabra	Pond Apple
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AQUIFOLOIACEAE (HOLLY FAMILY)

Ilex cassine	Dahoon Holly
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ARECACEAE (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
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BETULACEAE (BIRCH FAMILY)

Carpinus caroliniana	Iron Wood
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BORAGINACEAE (BORAGE FAMILY)

Cordia sebestena	Geiger Tree
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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 Hercules Club
clavaherculis

SALICACEAE (WILLOW FAMILY)

Salix caroliniana Coastal-Plain Willow

SAPOTACEAE (SAPODILLA FAMILY)

Bumelia celastrina	Buckthorn/ Saffon Plum
Bumelia tenax	Buckthorn/ Tough Bumelia
Chrysophyllum oliviforme	Satinleaf
Mastichodendron foetidissimum	Mastic

SIMAROUBACEAE (QUASSIA FAMILY)

Simarouba glauca	Paradise Tree
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TAXODIACEAE (BALD CYPRESS FAMILY)

Taxodium ascendens	Pond Cypress
Taxodium distichum	Bald Cypress

THEACEAE (CAMELIA FAMILY)

Gordonia lasianthus	Loblolly Bay
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THEOPHRASTACEAE (JOEWOOD FAMILY)

Jacquinia keyensis	Joewood
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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 administrator. 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 county may, with the owner's permission, relocate the tree (not being relocated within the property) at the town's county's expense to publicly county-owned property for replanting, either for permanent utilization at a new location or for future use at

another location other county-owned property. If the town county 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 the city's expense for relocation within the city's incorporated area for public use. 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 administrator 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 administrator, before occupancy or use, unless approval for their removal has been granted under permit.

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

(h) If, in the opinion of the director administrator, 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 administrator and the violator, or, if they cannot agree, then upon conviction by the court, ~~the code enforcement board~~ 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 administrator 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 administrator.
 - 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; ~~the code enforcement board~~ 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 underground utility or county easement that prohibits such plantings. The director administrator 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 administrator.
- (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 ~~preliminary~~ 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 administrator 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 ~~by county staff~~ are necessary. In order that the town county be compensated by the violator for the costs of these periodic inspections of the restored site ~~by county staff~~, a schedule of inspection fees ~~may shall~~ be established by the town; if no such schedule exists, inspection fees shall be those charged for similar services by Lee County. ~~administrative code to be approved by the board of county commissioners.~~

(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.

**~~DIVISION 2:
ADMINISTRATION AND ENFORCEMENT~~**

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 ~~and located in the unincorporated areas of the county~~, 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 administrator, in writing, on a form provided by the director administrator, accompanied by a written statement indicating the reasons for removal.

(b) **Authority of director administrator.** The director administrator 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 administrator. Where an application has been submitted to the director administrator for the removal of more than five protected trees, no tree removal permit shall be issued by the director administrator until a site plan for the lot or parcel has been reviewed and approved by the director administrator, 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 administrator. For the removal of ~~five~~ three protected trees or less, an on-site examination by the director's administrator'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 administrator shall approve a permit for issuance for the removal of any protected tree if the director

administrator 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 prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other county regulations.
- (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 administrator, 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 prevent the lawful development of a lot or parcel or would place an inordinate burden on the landowner, or the physical use thereof.
- (7) The director administrator 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 § 34-83(d).

(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 administrator meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the director administrator.

(f) **Inspection of site.** The director administrator 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, ~~as identified in the Lee Plan~~, 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~~ will be set in accordance with the county administrative code and paid to the ~~director~~ administrator. 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~~ administrator shall approve or deny the application, and, if approved, the ~~director~~ administrator is the party so designated by the ~~town board of county commissioners~~ to issue the permit for a period not to exceed one year and to collect the permit fee.

(h) **Conditions.** The ~~director~~ administrator 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.

~~Sec. 14-413. Variances.~~ [deleted in its entirety]

~~Sec. 14-414. Inspections; notice of violation.~~
[deleted in its entirety]

~~Sec. 14-415. Stop work orders.~~ [deleted in its entirety]

Secs. 14-413~~6~~--14-450. Reserved.

ARTICLE VI. MANGROVE PROTECTION ENFORCEMENT⁵

Sec. 14-451. Purpose and intent of article.

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 ~~within the unincorporated areas of the county.~~ It is not the intent of this article to diminish any mangrove protection requirements set forth in ch. 26, article II § 26-41 et seq. 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.

Director Administrator means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee. ~~county administrator or his designee, who is the person responsible for administering the provisions of this article.~~

Invasive exotic vegetation means Australian pine (*Casuarina* spp.), Brazilian pepper (*Schinus terebinthifolius*), and paper or punk tree (*Melaleuca quinquenervia*), Earleaf Acacia (*Acacia Auriculiformis*), and primrose willow (*Ludwigia peruviana*).

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

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 of article; penalties.

(a) The ~~director administrator~~ is authorized to pursue any one or combination of the ~~following enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2)~~ for any violation of this article. *[remainder of subsection deleted in its entirety]*

~~(b) Penalties: [deleted in its entirety]~~

~~(b e) Any equitable, legal, or leasehold owner of property who knew, or should have known, that illegal or improper trimming and/or removal of mangroves was occurring on property on which that individual has any equitable, legal, or leasehold interest, and who permitted that activity to occur without notifying the administrator of the person, organization, society, association, corporation, or any agency or representative thereof, shall be equally subject to any civil or criminal penalty set forth in this article. When imposing a sentence or penalty, the court, hearing examiner, code enforcement board 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, the code enforcement board, 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 d) 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 administrator~~ and the violator, or if they cannot agree, then, upon conviction by the court; ~~or order of the hearing examiner, or the code enforcement board~~; 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, or the code enforcement board~~.

(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 administrator~~ 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 administrator~~ 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 underground utility or county 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 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~~ administrator 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 ~~unincorporated areas of the county~~, 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.

Sec. 14-457. Repealer; applicability of previous ordinance: *[deleted in its entirety]*

**CHAPTERS 15–21
RESERVED**

Exhibit E

PROPOSED ADOPTION OF CHAPTER 22 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 22 HISTORIC PRESERVATION¹

ARTICLE I. IN GENERAL

- Sec. 22-1. Purpose of chapter.
Sec. 22-2. Applicability of chapter.
Sec. 22-3. Definitions.
Sec. 22-4. Penalty for violation of chapter.
Secs. 22-5--22-40. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Division 1. Generally

- ~~Sec. 22-41. Stop work orders.~~
Sec. 22-41#2. Appeals.
~~Secs. 22-42#3--22-70. Reserved.~~

Division 2. Historic Preservation Board

- Sec. 22-71. ~~Establishment; General authority.~~
Sec. 22-72. ~~Reserved. Membership; compensation
of members; removal of members.~~
Sec. 22-73. ~~Reserved. Organization; meetings.~~
Sec. 22-74. Powers and duties.
~~Sec. 22-75. Rules and regulations.~~
Secs. 22-76 ~~75--22-100. Reserved.~~

Division 3. Certificate of Appropriateness

- Sec. 22-101. Required.
Sec. 22-102. Regular certificate of
appropriateness.
Sec. 22-103. Special certificate of
appropriateness.
Sec. 22-104. Demolition.
Sec. 22-105. Moving permits.

Division 4. Archaeological sites

- Sec. 22-106. Archaeological sites ~~and districts.~~
Secs. 22-107--22-140. Reserved.

ARTICLE III. DESIGNATION OF ~~HISTORIC DISTRICTS AND~~ RESOURCES AND DISTRICTS

Division 1. Generally

- Secs. 22-141--22-170. Reserved.

Division 2. Incentives

- Sec. 22-171. Financial assistance.
Sec. 22-172. Nomination to National Register of
Historic Places.
Sec. 22-173. Relief from building regulations.
Sec. 22-174. Relief from zoning and development
regulations.
Sec. 22-175. Variances from floodplain
management regulations.

- Secs. 22-176--22-200. Reserved.

Division 3. Designation Procedure

- Sec. 22-201. Initiation of designation process.
Sec. 22-202. Designation report.
Sec. 22-203. Required notices; action by historic
preservation board.
Sec. 22-204. Criteria for designation.
Sec. 22-205. Amendment or withdrawal of
designation.
Secs. 22-2065--22-240. Reserved.

ARTICLE IV. MAINTENANCE AND REPAIR ~~OF PREMISES~~

- Sec. 22-241. Ordinary maintenance and repair.
Sec. 22-242. Correction of deficiencies generally.
Sec. 22-243. Unsafe structures.
Sec. 22-244. Emergency work.
Sec. 22-245. Demolition by neglect.
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¹Cross reference(s)--Buildings codes and floodplain
regulations, and building regulations, ch. 6; zoning, ch. 34.

ARTICLE I. IN GENERAL

Sec. 22-1. Purpose of chapter.

(a) The purpose of this chapter is to identify, evaluate, preserve, and protect historical and archaeological sites and districts, and to promote the cultural, health, moral, economic, educational, aesthetic, and general welfare of the public by:

- (1) ~~Establishing~~ Creating a historic preservation board with the power and duty to review historic sites, areas, structures, and buildings for possible designation as historic resources.
- (2) Empowering the historic preservation board to determine the historical significance of a designated historic resource.
- (3) Protecting designated historic resources by requiring the issuance of certificates of appropriateness and certificates to dig before allowing alterations to those resources.
- (4) Encouraging historic preservation by creating programs of technical assistance and financial incentives for preservation practices.
- (5) Stabilizing and improving property values through the revitalization of older residential and commercial neighborhoods.
- (6) Enhancing the ~~town's county's~~ attraction to visitors and the ensuing positive impact on the economy as a result of historic preservation activities.
- (7) Creating and promoting cultural and educational programs aimed at fostering a better understanding of the community's heritage.
- (8) Promoting the sensitive use of historic and archaeological sites, resources, and districts for the education, pleasure, and welfare of the people of the town and county.
- (9) Implementing the historic preservation element of the Fort Myers Beach Comprehensive Plan.

~~(b) The further purpose of this chapter is to obtain Certified Local Government status pursuant to the Procedures for Approved State and Local Government Historic Preservation Programs, 36 CFR 67 (1987) and the National Historic Preservation Act of 1966, as amended, 16 USC 470.~~

Sec. 22-2. Applicability of chapter.

(a) This chapter shall govern and be applicable to all property located in the ~~unincorporated area of the town, county. The municipalities of Fort Myers, Sanibel and Cape Coral are excluded from the provisions of this chapter except where such municipalities may undertake activities outside of their corporate limits.~~

(b) Nothing contained in this chapter shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided in this chapter.

Sec. 22-3. Definitions.

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

Archaeological site means an individual historic resource recognized for its prehistoric or historic artifacts and features.

Archaeologist means a person who is qualified under the professional standards of the Florida Archaeological Council or the Society of Professional Archaeologists to conduct archaeological surveys, assessments, or excavations, or is recognized as qualified to perform those tasks by the county.

Area of archaeological sensitivity means an area identified in the survey entitled "An Archaeological Site Inventory and Zone Management Plan For Lee County, Florida" (Piper Archaeological Research, Inc., 1987), as known or being likely to yield information on the history and prehistory of the town county based on prehistoric settlement patterns and existing topographical features. Areas of archaeological sensitivity are divided into the following categories:

- (1) *Sensitivity Level 1*: Those areas containing known archaeological sites that are considered to be significant or potentially significant historic resources. These areas include sites listed on the National Register of Historic Places and those considered eligible or potentially eligible for listing on the National Register of Historic Places or local historic resource designation.

- (2) *Sensitivity Level 2*: Those areas containing known archaeological sites that have not been assessed for significance but are likely to conform to the criteria for local designation, or areas where there is a high likelihood that unrecorded sites of potential significance are present.

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, or property of any kind.

Building official means the same officer as appointed by the town manager through § 6-44. officer charged with the administration and enforcement of the county construction code as set out in ch. 6, article H.

Certificate of appropriateness means a written authorization by the director or the historic preservation board or county staff to the owners of a designated historic resource property or any building, structure, or site within a designated historic district, allowing a proposed alteration, relocation, or the demolition of a building, structure, or site. Certificates of appropriateness are divided into the following two classes:

- (1) *Regular certificate of appropriateness* means a certificate of appropriateness issued by the director county staff allowing minor activities which require the issuance of a building permit but which will result in little or no change in appearance. but which are classified as ordinary maintenance and repair under the provisions of this chapter and the criteria listed in the U.S. Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.
- (2) *Special certificate of appropriateness* means a certificate of appropriateness issued directly by the historic preservation board and required for any proposed work that will result in the alteration, demolition, relocation, reconstruction, new construction, or excavation, but which does not qualify for a regular certificate of appropriateness. of a designated historic resource, based upon the criteria listed in the U.S. Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.

Certificate to dig means a certificate issued by the director county staff or the historic preservation board authorizing certain clearing, digging, archaeological investigation, or archaeological development projects that may involve the exploration of established or suspected archaeological sites in areas of archaeological sensitivity level 1 or 2.

Certified local government [deleted]

Contributing property means any building, structure, or site which contributes to the overall historic significance of a designated historic district and was present during the period of historic significance and possesses historic integrity reflecting the character of that time or is capable of yielding important information about the historically significant period, or which independently meets the criteria for designation as a historic resource.

Demolition means the complete removal of a building or structure, or portions thereof, from a site.

Demolition by neglect means the willful abandonment of a building or structure by the owner resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health and safety hazard is a likely result.

Designated means that the town has established the historical, cultural, architectural, aesthetic, or archaeological significance of a specific historic resource or district in accordance with §§ 22-201–22-204 of this chapter.

Designation certificate [deleted]

Designation report means a written document indicating the basis for the findings of the historic preservation board concerning the proposed designation of a historic resource or district pursuant to this chapter.

Zoning Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee, director of the zoning and development review division, or his successor or designee as the person responsible for administering the provisions of ch.

Exterior means all outside surfaces of a building or structure visible from a public right-of-way or the street easement of the building or structure.

Guidelines mean specific criteria set out in a designation report for a historic district that, if adopted by the historic preservation board, will be used to evaluate alterations, demolitions, relocations, excavations, and new construction within a historic district.

Historic district means a geographically definable area designated pursuant to this chapter possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A historic district may also be comprised of individual elements separated geographically but linked by association or history. ~~To qualify as~~ A historic district, ~~an area~~ may contain both contributing and noncontributing properties.

Historic preservation board or board means the local planning agency, a board of citizens appointed by the board of county commissioners town council in accordance with ch. 34, article II, division 3 of this code, that will to administer the provisions of this chapter in addition to its other duties.

Historic resource means any prehistoric or historic district, site, building, structure, object, or other real or personal property of historical, architectural or archaeological value. Historic resources may also include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the town, the county, the state or the United States. Significant historic resources may be “designated” by the town in accordance with §§ 22-201–22-204 of this chapter.

Historic resource database means the compilation of data gathered on historical and archaeological sites in the town county, based on the findings of the surveys entitled “Historical and Architectural Survey, Lee County” (Florida Preservation Services 1986), “Historical Report and

Survey Supplement for Lee County, Florida” (Janus Research 1992, and “An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida” (Piper Archaeological Research 1987), and any subsequent historic or archaeological survey.

National Register of Historic Places means a federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures, and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966 as amended, 16 USC 470, as such act may be amended, renumbered, or replaced, and its implementing regulation, 36 CFR 60, “National Register of Historic Places,” as such regulations may be amended, renumbered, or replaced.

Noncontributing property means any building, structure or site which does not contribute to the overall historic significance of a designated historic district due to alterations, disturbances, or other changes and therefore no longer possesses historic integrity, or was not present during the period of historic significance or is incapable of yielding important information about that period.

Ordinary maintenance and repairs means work done to prevent deterioration, decay, or damage to a building or structure, or any part thereof, by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay, or damage.

Owner means those individuals, partnerships, corporations, or public agencies holding fee simple title to real property. The term “owner” does not include individuals, partnerships, corporations, or public agencies holding easements or less than a fee simple interest (including leaseholds) in real property.

~~*Staff* [deleted]~~

Structure means that which is built or constructed. The term “structure” shall be construed as if followed by the words “or part thereof.”

Undue economic hardship means an onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a special certificate of appropriateness for demolition, thereby amounting to the taking of the owner’s

property without just compensation.

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

Sec. 22-4. Penalty for violation of chapter.

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 chapter.

(a) Any person, or any agent or representative thereof, who violates any provision of this chapter shall, upon conviction, be subject to the following penalties:

- (1) ~~Criminal penalties.~~ Such person shall be punished as provided in § 1-5.
- (2) ~~Civil penalties.~~ The following shall be applicable:
 - a. ~~Injunctive relief to enjoin and restrain any person from violating the provisions of this chapter; and~~
 - b. ~~Revocation, suspension, or amendment of any permit granted pursuant to this chapter.~~

In addition to all other criminal and civil penalties contained in this section, any person applying for a permit after commencing or completing construction of a structure in violation of this chapter shall pay twice the amount of the building permit fee as established by the county administrative codes:

(b) For purposes of this chapter, each day that a violation continues to exist will be considered a separate violation of this chapter, to which both civil and criminal penalties may apply.

Secs. 22-5--22-40. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 22-41. Stop work orders:

Any work conducted contrary to the provisions of this chapter shall be immediately stopped upon notice from the building official or his designee that the work does not conform to the terms of this

~~chapter. Notice shall be in writing and shall be given to the property owner or his agent, or to the person doing the work. If none of these persons are immediately available on the construction site to receive the required notice, it shall be posted on the property. The notice shall state all conditions under which work may be resumed. In emergencies, the building official shall not be required to furnish written notice of the stop work order.~~

Sec. 22-41-42. Appeals.

(a) Any owner of a building, structure, or site affected by the operation of this chapter may appeal a decision of the historic preservation board by filing a written notice of appeal within 15 days of the date the written decision of the historic preservation board was rendered. The notice of appeal shall be filed with the hearing examiner and a copy provided to the historic preservation board staff, which shall state the decision being appealed, the grounds for the appeal, and a summary of the relief sought.

(b) Appeals shall otherwise be pursued using the procedure set forth in § ~~34-86~~ 34-145(a), pertaining to appeals from administrative matters, except that the local planning agency shall not be required to hold a second public hearing to render a separate opinion from the decision it made while sitting as the historic preservation board. and in accordance with the county administrative codes adopted to implement the provisions of ch. 34.

(c) Except as may be required by F.S. § 163-3215, and then only pursuant to that statute, a third party shall not have standing to appeal a decision rendered under the provisions of this chapter.

Secs. 22-42-43--22-70. Reserved.

DIVISION 2. HISTORIC PRESERVATION BOARD

Sec. 22-71. Establishment; General authority.

The local planning agency, as established through ch. 34, article II, division 3 of this code, shall serve as the historic preservation board for the Town of Fort Myers Beach. There is hereby created a historic preservation board as an agency of the county government in and for the county. The

historic preservation board is hereby vested with the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the town county, as prescribed by this chapter, ~~under the direct jurisdiction and control of the board of county commissioners.~~

Sec. 22-72. Reserved. Membership; compensation of members; removal of members.
[deleted in its entirety]

Sec. 22-73. Reserved. Organization; meetings.
[deleted in its entirety]

Sec. 22-74. Powers and duties.

The historic preservation board shall have the following powers and duties:

- (1) To propose rules and procedures to implement the provisions of this chapter to the town council ~~board of county commissioners.~~
- (2) To maintain and update the findings of the historical and archaeological surveys and validate those findings.
- (3) To evaluate the significance and eligibility of historic resources for designation pursuant to this chapter.
- (4) To designate eligible historic resources pursuant to this chapter.
- (5) To nominate historic resources to the National Register of Historic Places.
- (6) To approve, deny, or approve with conditions applications for special certificates of appropriateness and certificates to dig applicable to historic resources designated pursuant to this chapter.
- (7) To issue ~~designation~~ certificates, place historical markers, and administer other programs aimed at the proper recognition of designated historic resources.
- (8) To advise the town council ~~board of county commissioners~~ on all matters related to historic preservation policy, including use, administration, and maintenance of town-owned ~~county-owned~~ designated sites and districts.
- (9) To recommend zoning and building code amendments to the town council ~~board of county commissioners~~ to assist in the preservation of designated historic resources or districts.
- (10) To review and make recommendations to the town council ~~board of county commissioners~~ on proposed amendments to the comprehensive plan or this code ~~and development regulations~~ that may affect designated historic resources and districts or buildings, structures, districts, or sites eligible for designation.
- (11) To propose and recommend to the town council ~~board of county commissioners~~ financial and technical incentive programs to further the objectives of historic preservation.
- (12) To increase the awareness of historic preservation and its community benefits by promoting public education programs.
- (13) To record and maintain records of the actions and decisions of the historic preservation board.
- (14) To apply for, in the name of the town county only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.
- ~~(15) Upon designation as a certified local government, to review and make recommendations concerning National Register of Historic Places nomination proposals to the Florida Review Board.~~
- (15) ~~(16)~~ To perform any other function or duty assigned to it by the town council ~~board of county commissioners.~~

Sec. 22-75. Rules and regulations. *[deleted in its entirety]*

Secs. 22-76 75--22-100. Reserved.

DIVISION 3. CERTIFICATE OF APPROPRIATENESS

Sec. 22-101. Required.

(a) No building, moving or demolition permit shall be issued for a designated historic resource, or a building, structure, or site which is part of a designated historic or archaeological district, until a certificate of appropriateness has been issued.

(b) ~~Except for applications requesting certificates of appropriateness for noncontributing properties,~~
The criteria for issuance of a certificate of

appropriateness (regular or special) shall be:

(1) For designated historic resources and contributing properties in a historic district:

- a. The U.S. Secretary of the Interior's *Standards for Rehabilitation*, 36 CFR 67.7 (1990 ~~1983~~), as such standards may be amended, renumbered, or replaced, which are hereby adopted by reference as though set forth fully in this article. Guidance in interpreting the *Standards for Rehabilitation* may be found in the rehabilitation chapter of *The Secretary of the Interior's Standards for the Treatment of Historic Properties, With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, published by the Department of the Interior's National Park Service in 1995; and
- b. The specific guidelines, if any, set out in the resolution designating the historic district where the property is located.

(2) For noncontributing properties in a historic district: Applications for certificates of appropriateness for noncontributing properties shall be reviewed using The specific guidelines, if any, criteria set out for noncontributing properties in the resolution designating the historic district where the property is located.

Sec. 22-102. Regular certificate of appropriateness.

(a) A regular certificate of appropriateness shall be required for work requiring a building permit and classified as ordinary maintenance and repair by this chapter, or for any work that will result, to the satisfaction of the director county staff, in the close resemblance in appearance of the building, architectural feature, or landscape feature to its appearance when it was built or was likely to have been built, or to its appearance as it presently exists so long as the present appearance is appropriate to the style and materials.

(b) The director historic preservation board staff shall, within five working days from the date a complete application has been filed, approve, deny, or approve with conditions an application for a regular certificate of appropriateness presented by the owner of a designated historic resource or a

property within a designated historic district. The findings of the director staff shall be mailed by certified mail, return receipt requested, to the applicant within two working days of the staff decision, accompanied by a statement explaining the decision. The applicant shall have an opportunity to appeal the director's staff decision by applying for a special certificate of appropriateness within 30 calendar days of the date the decision is issued.

Sec. 22-103. Special certificate of appropriateness.

(a) **Required.**

- (1) A special certificate of appropriateness shall be issued by the historic preservation board prior to initiation of any work involving alteration, demolition, relocation, reconstruction, excavation, or new construction which will result in a change to the original appearance of a designated historic resource or a contributing property within a designated historic district.
- (2) A special certificate of appropriateness is also required prior to any new construction, reconstruction, or alteration of a noncontributing property within a designated historic district, except where the director has issued a regular certificate of appropriateness for minor activities that will result in little or no change in appearance.
- (3) A special certificate of appropriateness may also be issued to reverse or modify the director's a staff decision regarding an application for a regular certificate of appropriateness or a conditional certificate to dig.

(b) **Application.** An applicant for a special certificate of appropriateness shall submit an application to the director historic preservation board accompanied by full plans and specifications, a site plan, and, in the case of sites involving buildings or structures, samples of materials as deemed appropriate by the historic preservation board to fully describe the proposed appearance, color, texture, materials, or design of the building or structure and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage, or exterior lighting. The applicant shall provide adequate information to enable the historic preservation board to visualize the effect of the

proposed action on the historic resource and on adjacent buildings and streetscapes within a historic district.

(c) **Public hearing.** The historic preservation board shall hold a public hearing upon an application for a special certificate of appropriateness affecting designated historic resources or districts. Notice of the public hearing shall be given to the property owners by certified mail, return receipt requested, and to other interested parties by an advertisement in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of hearing.

(d) **Action of historic preservation board.** The historic preservation board shall meet and act upon an application for a special certificate of appropriateness on or within 70 calendar days from the date the application and materials adequately describing the proposed action are received. The historic preservation board shall approve, deny, or approve the special certificate of appropriateness with conditions, ~~subject to the acceptance of the conditions by the applicant,~~ or suspend action on the application for a period not to exceed 35 calendar days in order to seek technical advice from outside sources or to meet further with the applicant to revise or modify the application. Failure of the historic preservation board to act upon an application on or within 70 calendar days (if no additional information is required) or 105 calendar days (if additional information is required by the historic preservation board) from the date the application was received shall result in the immediate issuance of the special certificate of appropriateness applied for, without further action by the historic preservation board.

(e) **Notice of decision.** All decisions of the historic preservation board shall be in writing and shall include findings of fact. Evidence of approval of the application shall be by the special certificate of appropriateness issued by the historic preservation board or the director on the boards's behalf, ~~designated staff representative.~~ Notice of a decision shall be given to the applicant and to the building official, the ~~zoning~~ director and any other appropriate public agency, as determined by the historic preservation board. When an application is denied, the notice of the historic preservation board shall provide an adequate written explanation of its

decision to deny the application. The director shall keep a record of the historic preservation board's ~~shall keep a record of its actions~~ under this chapter.

Sec. 22-104. Demolition.

(a) Demolition of a designated historic resource or a contributing property within a designated historic district may only occur pursuant to an order of a governmental body or board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a special certificate of appropriateness for demolition.

(b) Governmental agencies having the authority to demolish unsafe structures shall receive notice of the designation of historic resources and districts pursuant to article III of this chapter. The historic preservation board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by such agencies regarding demolition of any designated historic resource or contributing property to a designated historic district. The historic preservation board may make recommendations and suggestions to the governmental agency and the owner relative to the feasibility of and the public interest in preserving the designated resource.

(c) No permit for voluntary demolition of a designated historic resource or contributing site within a historic district shall be issued to the owner thereof until an application for a special certificate of appropriateness has been submitted to the historic preservation board and approved pursuant to the procedures in this article. The historic preservation board shall approve, deny, or approve with conditions the application for a special certificate of appropriateness for demolition. Refusal by the historic preservation board to grant a special certificate of appropriateness for demolition shall be evidenced by a written order detailing the public interest which is sought to be preserved. The historic preservation board may grant a special certificate of appropriateness for demolition which may provide for a delayed effective date of six months to allow the historic preservation board to seek possible alternatives to demolition. During the demolition delay period the historic preservation board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purpose of this chapter. Such steps may include but shall not be limited to consultation with

civic groups, public agencies, and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving the building or other feature.

(d) The historic preservation board shall consider the following criteria in evaluating applications for certificates of appropriateness for demolition of designated historic resources or contributing properties within a designated historic district:

- (1) Is the building or structure of such interest or quality that it would reasonably meet national, state, or local criteria for additional designation as a historic or architectural landmark?
- (2) Is the building or structure of such design, craftsmanship, or material that it could be reproduced only with great difficulty or expense?
- (3) Is the building or structure one of the last remaining examples of its kind in the neighborhood, the town, the county, or the region?
- (4) Does the building or structure contribute significantly to the historic character of a designated historic district?
- (5) Would retention of the building or structure promote the general welfare of the town county by providing an opportunity for the study of local history or prehistory, architecture, and design, or by developing an understanding of the importance and value of a particular culture and heritage?
- (6) Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?
- (7) Has demolition of the designated building or structure been ordered by the appropriate public agency due to unsafe conditions?

(e) Unless demolition has been ordered by a court of competent jurisdiction or another governmental body, a special certificate of appropriateness for demolition of a designated building or structure shall not be issued until there are definite plans for reuse of the property and a building permit or development order for the new construction has been applied for.

(f) If an undue economic hardship is claimed by the property owner as a result of the denial of a

special certificate of appropriateness for demolition, the historic preservation board shall have the power to vary or modify adherence to its original decision no later than 35 calendar days from the date the original decision is issued. Any variance or modification of a prior order shall be based upon sufficient evidence submitted by the owner and a subsequent finding by the historic preservation board that retention of the building or structure would deny the owner of all economically viable use of the property, thus creating an undue economic hardship. The owner may present the following evidence as grounds for such a finding:

- (1) For all property, the owner may present:
 - a. The amount paid for the property, the date of purchase, and the party from whom purchased;
 - b. The assessed value of the land and improvements thereon according to the two most recent property tax assessments;
 - c. The amount of real estate taxes for the previous two years;
 - d. The annual debt service, if any, for the previous two years;
 - e. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - f. Any listings of the property for sale or lease, the price asked, and offers received, if any; and
 - g. Any profitable adaptive uses for the property which have been considered by the owner.
- (2) In addition to the items set forth in subsection (f)(1) of this section, the owner may present, for income-producing property:
 - a. The annual gross income from the property for the previous two years;
 - b. Itemized operating and maintenance expenses for the previous two years; and
 - c. The annual cash flow, if any, for the previous two years.

Sec. 22-105. Moving permits.

The historic preservation board shall consider the following criteria for applications for special certificates of appropriateness for the moving of all historic resources and contributing properties located within a designated historic district:

- (1) The historic character and aesthetic interest the building or structure contributes to its present setting.
- (2) The reasons for the proposed move.
- (3) The proposed new setting and the general environment of the proposed new setting.
- (4) Whether the building or structure can be moved without significant damage to its physical integrity.
- (5) Whether the proposed relocation site is compatible with the historical and architectural character of the building or structure.
- (6) When applicable, the effect of the move on the distinctive historical and visual character of a designated historic district.

DIVISION 4. ARCHAEOLOGICAL SITES

Sec. 22-106. Archaeological sites and districts.

(a) ***Identification. Designation.*** The survey entitled “An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida” (Piper Archaeological Research, Inc., 1987) was the basis for Figure 22-1, which shall be used:

- (1) to identify areas of archaeological sensitivity levels 1 and 2, for which certificates to dig must be obtained (see § 22-106(c)); and
- (2) as the initial database when considering the formal designation of areas of archaeological sensitivity level 1 as historic resources pursuant to §§ 22-201–22-204.

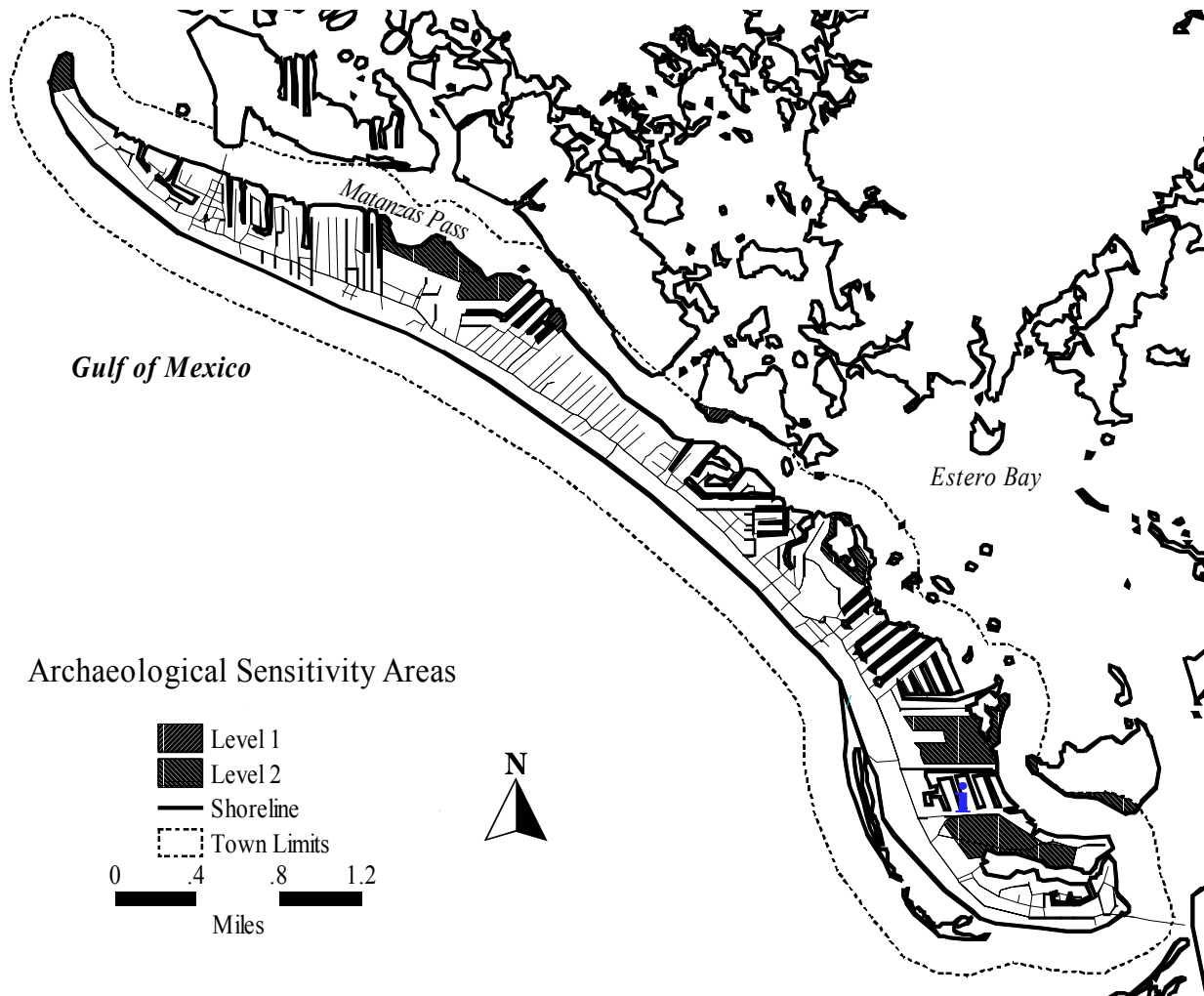


Figure 22-1 – Archaeological Sensitivity Areas, Levels 1 and 2

(b) **Certificate of appropriateness.** A certificate of appropriateness shall be required prior to the issuance of a development order or building permit for activity within an archaeological site ~~or district that has been~~ designated as a historic resource pursuant to §§ 22-201-22-204. ~~this chapter.~~

- (1) An application for a certificate of appropriateness in accordance with §§ 22-101-22-105 shall be accompanied by full plans and specifications indicating areas of work that might affect the surface and subsurface of the archaeological site or sites.
- ~~(1) The requirements outlined in article III of this chapter shall apply to all applications and the issuance of all certificates of appropriateness for archaeological sites and districts designated pursuant to this chapter.~~
- (2) In reviewing the application for a special certificate of appropriateness for a designated archaeological site, the historic preservation board may also require any or all of the following:
 - a. Scientific excavation and evaluation of the site by an archaeologist at the owner's expense.
 - b. An archaeological survey, conducted by an archaeologist, containing an analysis of the impact of the proposed activity on the archaeological site.
 - c. Proposal for mitigation measures.
 - d. Protection or preservation of all or part of the designated archaeological site for green space, in exchange for incentives as provided in article III, division 2, of this chapter.

~~(3) [moved to § 22-106(d)]~~

(c) **Certificate to dig.** ~~The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" shall be used to identify areas of archaeological sensitivity levels 1 and 2.~~ (1) A certificate to dig shall be required prior to or in conjunction with the issuance of a final development order or building permit for activity within any area of archaeological sensitivity levels 1 and 2 that may involve new construction, filling, digging, removal of trees, or any other activity that may alter or reveal an interred archaeological site.

- (1) If submerged or wetland areas, such as ponds, sloughs, or swamps, are also to be damaged by development or by dredge and fill activities, these shall also be assessed for

their potential to contain significant archaeological sites.

- (2) The purpose of a certificate to dig shall be to allow sufficient time to conduct any necessary investigations, including the location, evaluation, and protection of significant archaeological sites in areas suspected of having such archaeological sites.
- (3) ~~The director staff of the historic preservation board~~ shall, within 15 calendar days of receipt of a complete application for a certificate to dig, approve the application for a certificate to dig, or approve the certificate to dig subject to specified conditions, including but not limited to a delay not to exceed 60 days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. ~~Staff's~~ The director's decision shall be based on the application and any other guidelines which the historic preservation board may establish. If the approved certificate to dig requires archaeological excavation, the certificate shall specify a period of time during which excavation shall occur, not to exceed 60 days unless the owner agrees to an extension. The owner shall have an archaeologist conduct excavations as necessary during this period. The certificate to dig and any ~~staff~~ findings shall be mailed to the applicant by certified mail, return receipt requested, within seven calendar days of its review and approval.
- (4) The applicant shall have the opportunity to appeal any conditions attached to a certificate to dig by applying for a special certificate of appropriateness within 30 calendar days of the date the conditional certificate to dig is issued. The historic preservation board shall convene no later than 50 calendar days after the date a completed application for a special certificate of appropriateness is filed ~~with the staff~~. Approved certificates to dig shall contain an effective date not to exceed 60 calendar days, at which time the proposed activity may begin, unless the archaeological excavation should uncover evidence of such significance that it warrants designation of the archaeological site as a historic resource pursuant to §§ 22-201-22-204. ~~article III of this chapter.~~

- (5) All work performed pursuant to the issuance of a certificate to dig shall conform to the requirements of such certificate. It shall be the duty of the director ~~appropriate county agencies and the staff of the historic preservation board~~ to inspect work for compliance with such certificate. In the event of noncompliance, the director or the building official ~~appropriate county staff~~ shall have the power to issue a stop work order and all work shall cease.

(d) *Human burials.* To knowingly disturb human burial remains is a third degree felony in the state, pursuant to F.S. ch. 872, pertaining to offenses concerning dead bodies and graves. The law includes prehistoric as well as historic period interments, and aboriginal burial mounds or cemeteries as well as historic period cemeteries. Procedures for dealing with the accidental discovery of unmarked human burials are outlined in F.S. ch. 872.

- (1) If unmarked human burials are suspected or known in an area under consideration for any certificate of appropriateness or certificate to dig, the area shall be surveyed by a professional archaeologist to locate such remains.
- (2) Procedures for dealing with human remains shall be carried out according to F.S. ch. 872. Any located human interments should be preserved in place if at all possible. If it is necessary to excavate or otherwise move the remains, every effort shall be made to identify and contact persons who may have a direct kinship, tribal, community, or ethnic relationship with the deceased in order to arrange for their appropriate reinterment or disposition. *[moved from § 22-106(b)(3)]*

Secs. 22-107--22-140. Reserved.

ARTICLE III. DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES AND DISTRICTS

DIVISION 1. GENERALLY

Secs. 22-141--22-170. Reserved.

DIVISION 2. INCENTIVES

Sec. 22-171. Financial assistance.

All properties designated as historic resources or as a contributing property to a designated historic district shall be eligible for any financial assistance set aside for historic preservation projects by the town, the county, the state, or the federal government, provided they meet any additional requirements of those financial assistance programs. ~~The historic preservation board and its staff shall investigate funding sources and make recommendations to the board of county commissioners to establish a program providing for transfer of development rights, easements and other local financial assistance programs whenever possible.~~

Sec. 22-172. Nomination to National Register of Historic Places.

The historic preservation board shall encourage and assist in the nomination of eligible ~~income-producing~~ properties to the National Register of Historic Places in order to make available to those property owners the investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986 and any other programs offered through the National Register of Historic Places.

Sec. 22-173. Relief from building regulations.

Designated historic resources and any property in contributing properties to a designated historic district may be eligible for administrative variances or other forms of relief from applicable building ~~and zoning~~ codes as follows: Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a building or structure may be made without conformance to the technical requirements of the Standard Building Code when the proposed work

has been approved by a regular or special certificate of appropriateness and also by the building official, pursuant to the authority granted to the building official by other ordinances or statutes, provided that:

- (1) The restored building will be no more hazardous based on considerations of life, fire, sanitation, and safety than it was in its original condition.
- (2) Plans and specifications are sealed by a Florida registered architect or engineer, if required by the building official.
- (3) The building official has required the minimum necessary corrections to be made before use and occupancy which will be in the public interest of health, safety, and welfare.

Cross reference--Building codes, ch. 6, article II, divisions 3 and 4; floodplain regulations, ch. 6, article IV.

Sec. 22-174. Relief from zoning and development regulations.

The zoning director may, by written administrative decision, approve any relief request for designated historic resources or any property in contributing properties to a designated historic district; for matters involving setbacks, lot width, depth, area requirements, ~~land development regulations~~, height limitations, open space requirements, parking requirements, and other similar zoning relief from this code not related to a change in use of the property in question.

- (1) Before granting relief, the zoning director must find that:
 - a. The relief will be in harmony with the general appearance and character of the community.
 - b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety, or welfare.
 - c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.
- (2) In granting any relief, the zoning director may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:

- a. Landscape materials, walls and fences as required buffering.
- b. Modifications of the orientation of any openings.
- c. Modifications of site arrangements.

The owner of a building, structure or site affected by the operation of this chapter and the decision of the zoning director may appeal that decision according to the provisions of ch. 34.

- ~~(3) The procedure for granting parking relief in the Matlacha historic district shall be [deleted in its entirety]~~
- ~~(4) The provisions of subsection (3) of this section [deleted in its entirety]~~

Cross reference(s)--Zoning, ch. 34.

Sec. 22-175. Variances from floodplain management regulations.

Variances from the floodplain management regulations may be requested pursuant to the terms of ch. 6, article IV.

Secs. 22-176--22-200. Reserved.

DIVISION 3. DESIGNATION PROCEDURE

Sec. 22-201. Initiation of designation process.

The designation process under this chapter may be initiated by a written petition from the property owner, by a majority vote of the historic preservation board, or at the request of the town council ~~board of county commissioners~~. The historic resource database shall be used initially to identify buildings, structures, and sites potentially eligible for historic designation.

- (1) ***Designation proposed by owner.*** When designation is requested by the owner, a written petition for designation shall be filed, accompanied by sufficient information to warrant further investigation of the property and to aid in the preparation of a designation report. The historic preservation board shall, based on the request and information presented, either ask the director ~~direct staff~~ to begin or assist in preparation of a designation report, accept and direct the filing of a designation report prepared by the owner, reject a report submitted for filing, or

deny the designation petition. Upon the filing of a designation report, the historic preservation board may ~~request the director direct staff~~ to commence the designation and notice process.

- (2) ***Designation proposed by historic preservation board or town council board of county commissioners.*** Upon the recommendation of ~~the director staff~~, a request by a member of the historic preservation board, or a request by the ~~town council board of county commissioners~~, the historic preservation board may ~~ask the director direct staff~~ to prepare or assist in preparation of a designation report. Upon completion of the designation report, the historic preservation board may, by majority vote, initiate the designation process by a motion ~~asking the director directing staff~~ to file the designation report and begin the notification process.

Sec. 22-202. Designation report.

Prior to the designation of any historic resource or historic district pursuant to this chapter, a designation report shall be filed with the historic preservation board. The designation report shall contain the following information:

- (1) ***Individual buildings or sites.*** For individual historic or archaeological buildings, structures or sites:
- A physical description of the building, structure or site and its character-defining features, accompanied by photographs.
 - A statement of the historical, cultural, architectural, archaeological, or other significance of the building, structure, or site as defined by the criteria for designation established by this chapter.
 - A description of the existing condition of the building, structure, or site, including any potential threats or other circumstances that may affect the integrity of the building, structure, or site.
 - A statement of rehabilitative or adaptive use proposals.
 - A location map, showing relevant zoning and land use information.
 - ~~Staff~~ The director's recommendations concerning the eligibility of the building,

structure, or site for designation pursuant to this chapter, and a listing of those features of the building's structure or site which require specific historic preservation treatments.

- (2) ***Historic districts.*** For historic or archaeological districts:
- A physical description of the district, accompanied by photographs of buildings, structures, or sites within the district indicating examples of contributing and noncontributing properties within the district; also, a list of all contributing properties outside the proposed boundaries of the district.
 - A description of typical architectural styles, character-defining features, and types of buildings, structures, or sites within the district.
 - An identification of all buildings, structures, and sites within the district and the proposed classification of each as contributing, contributing with modifications, or noncontributing, with an explanation of the criteria utilized for the proposed classification.
 - A statement of the historical, cultural, architectural, archaeological, or other significance of the district as defined by the criteria for designation established by this chapter.
 - A statement of recommended boundaries for the district and a justification for those boundaries, along with a map showing the recommended boundaries.
 - A statement of incentives requested, if any, and the specific guidelines which should be used in authorizing any alteration, demolition, relocation, excavation, or new construction within the boundaries of the district.

Sec. 22-203. Required notices; action by historic preservation board.

The historic preservation board shall hold timely public hearings upon every petition for designation made pursuant to this chapter. ~~Any~~ References in this chapter to calendar days shall include Saturdays, Sundays, and legal holidays. ~~Any~~ References in this chapter to working days excludes Saturdays, Sundays, and legal holidays.

- (1) **Notice to owner.** The historic preservation board shall notify the property owners of its intent to consider a proposed designation at least 20 calendar days prior to the date of the public hearing. Notice shall be sent by certified mail, return receipt requested, to the record owners of the property as reflected by the current ad valorem tax roll. Prior to the hearing, the ~~director~~ ~~county staff~~ shall furnish the owners with copies of the designation report and this chapter. ~~The director~~ ~~County staff~~ shall make a reasonable effort to contact the owners after mailing the notice of intent to designate, answer the owner's questions, and address areas of concern prior to the public hearing.
- (2) **Notification of public hearing.** For each proposed designation pursuant to this chapter, the historic preservation board shall hold a public hearing no sooner than 20 calendar days and no later than 70 calendar days from the date a designation report has been filed with the historic preservation board and notice of the intent to designate sent to the owners. Notice of the public hearing shall be published in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of the public hearing.
- (3) **Decision deadlines.** Within 14 calendar days after the date of the public hearing, the historic preservation board shall render, by written resolution, its decision approving, denying, or approving with conditions a proposed designation pursuant to this chapter. The rendering of a decision by the historic preservation board shall constitute final administrative action. The historic preservation board shall notify the following parties of its actions and shall attach a copy of the resolution:
 - a. The owner of the affected property.
 - b. The building official.
 - ~~c. The zoning director.~~
 - ~~c.~~ ~~d.~~ The county clerk.
 - ~~e. The planning division.~~
 - ~~f. The department of transportation and engineering.~~
 - ~~d.~~ ~~g.~~ The county property appraiser.
 - ~~e.~~ ~~h.~~ Any other county, municipal, state, or federal agency, including agencies with demolition powers, that may be affected

by the decision of the historic preservation board.

- (4) **Recording of designation.** All resolutions designating historic resources shall be recorded in the public records of the county within 25 calendar days of the date the historic preservation board renders its decision, unless an appeal of that decision has been filed within the time limits established by this chapter.
- (5) **Suspension of activities.** Upon the filing of a designation report, no permits may be issued authorizing building, demolition, relocation, or excavation on the subject property until ~~such time as~~ final administrative action occurs or the expiration of 75 calendar days from the date the designation report is filed with the historic preservation board, whichever occurs first, unless an appeal of the decision of the historic preservation board is filed. If an appeal is filed as provided in this chapter, the suspension of activities shall continue in effect for an additional 35 calendar days from the date the historic preservation board renders its decision or until the rendering of a decision on the appeal, whichever occurs first. The property owner may waive the suspension of activities deadlines set out in this section. Waivers shall be in the form of a notarized statement to the historic preservation board for inclusion in the board's files. The historic preservation board shall notify all affected government agencies of the suspension of activities upon the filing of a designation report. The suspension of activities ~~shall also~~ expires after 60 days if no public hearing is held.

Sec. 22-204. Criteria for designation.

(a) **Significance generally.** The historic preservation board shall have the authority to designate historic resources based upon their significance in the town's or county's history, architecture, archaeology or culture, or for their integrity of location, design, setting, materials, workmanship, or associations, and because they:

- (1) Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric, or architectural history that have contributed to the pattern of history in the community, the

county, southwestern Florida, the state, or the nation;

- (2) Are associated with the lives of persons significant in our past;
- (3) Embody the distinctive characteristics of a type, period, style, or method of construction or are the work of a master; or possess high artistic value or represent a distinguishable entity whose components may lack individual distinction;
- (4) Have yielded or are likely to yield information on history or prehistory; or
- (5) Are listed or have been determined eligible for listing in the National Register of Historic Places.

(b) ***Historical or cultural significance.*** A historic resource shall be deemed to have historical or cultural significance if it is:

- (1) Associated with the life or activities of a person of importance in local, state, or national history;
- (2) The site of a historic event with a significant effect upon the town, county, state, or nation;
- (3) Associated in a significant way with a major historic event;
- (4) Exemplary of the historical, political, cultural, economic, or social trends of the community in history; or
- (5) Associated in a significant way with a past or continuing institution which has contributed substantially to the life of the community.

(c) ***Architectural or aesthetic significance.*** A historic resource shall be deemed to have architectural or aesthetic significance if it fulfills one or more of the following criteria:

- (1) Portrays the environment in an era of history characterized by one or more distinctive architectural styles;
- (2) Embodies the characteristics of an architectural style, period, or method of construction;
- (3) Is a historic or outstanding work of a prominent architect, designer, or landscape architect; or
- (4) Contains elements of design, detail, material, or craftsmanship which are of outstanding quality or which represented, in its time, a significant innovation, adaptation or response to the south Florida environment.

(d) ***Archaeological significance.*** A historic resource shall be deemed to have archaeological significance if it meets one or more of the following criteria:

- (1) There is an important historical event or person associated with the site;
- (2) The quality of the site or the data recoverable from the site is significant enough that it would provide unique or representative information on prehistoric or historical events;
- (3) The site was the locus of discrete types of activities such as habitation, religious, burial, fortification, etc.;
- (4) The site was the location of historic or prehistoric activities during a particular period of time; or
- (5) The site maintains a sufficient degree of environmental integrity to provide useful archaeological data. Such integrity shall be defined as follows:
 - a. The site is intact and has had little or no subsurface disturbance; or
 - b. The site is slightly to moderately disturbed, but the remains have considerable potential for providing useful information.

(e) ***Not generally eligible.*** Properties not generally considered eligible for designation include cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, buildings or sites primarily commemorative in nature, reconstructed historic buildings, and properties that have achieved significance less than 50 years prior to the date the property is proposed for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria described in this section or if they fall within one or more of the following categories:

- (1) A religious property deriving primary significance from architectural or artistic distinction of historical importance.
- (2) A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with a historic event or person.
- (3) A birthplace or grave of a historical figure of outstanding importance if there is no other

- appropriate site or building directly associated with his productive life.
- (4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.
 - (5) A property primarily commemorative in nature if design, age, tradition, or symbolic value have invested it with its own historical significance.
 - (6) A building, structure, site, or district achieving significance less than 50 years from the date it is proposed for designation if it is of exceptional historical importance.

Sec. 22-205. Amendment or withdrawal of designation.

(a) A request to amend or withdraw the designation of a historic resource shall be made and processed in accordance with the designation procedures and criteria in effect at the time the withdrawal is requested.

(b) A withdrawal request shall also be evaluated as to the following factors:

- (1) Whether any reduction or loss of historic or archaeological value was caused by the owner of the designated historic resource (as opposed to unavoidable actions of others or acts of god).
- (2) Whether the owner of the designated historic resource has taken advantage of relief pursuant to this chapter that would not have been available without the historic designation.
- (3) Whether the requested withdrawal would adversely affect other designated historic resources or nearby historic districts.

Secs. 22-2065--22-240. Reserved.

ARTICLE IV. MAINTENANCE AND REPAIR OF PREMISES

Sec. 22-241. Ordinary maintenance and repair.

Nothing in this chapter shall be construed to prevent or discourage the ordinary maintenance and repair of the exterior elements of any historic resource or any property within a designated historic district when such maintenance and repair do not involve a change of design, appearance (other than color), or material, and do not require a building permit.

Cross reference—Ordinary minor repairs allowed without permits, see building codes, §§ 6-111, 6-131, 6-151, and 6-171.

Sec. 22-242. Correction of deficiencies generally.

When the historic preservation board determines that the exterior of a designated historic resource, or a contributing property within a designated historic district, is endangered by lack of ordinary maintenance and repair, or that other improvements in visual proximity of a designated historic resource or historic district are endangered by lack of ordinary maintenance, or are in danger of deterioration to such an extent that it detracts from the desirable character of the designated historic resource or historic district, the historic preservation board may request appropriate officials or agencies of ~~the county~~ government to require correction of such deficiencies under the authority and procedures of applicable ordinances, laws, and regulations.

Sec. 22-243. Unsafe structures.

If the building official determines that any designated historic resource or contributing property is unsafe pursuant to the provisions of this code, ~~the applicable county ordinances~~, the building official will immediately notify the historic preservation board by submitting copies of such findings. Where appropriate and not in conflict with this code, ~~in accordance with applicable county ordinances~~, the historic preservation board shall encourage repair of the building or structure rather than demolition. The building official will, in these instances, take into consideration any comments and recommendations made by the historic preservation board. The historic preservation board may also endeavor to negotiate with the owner and

interested parties, provided such actions do not interfere with procedures established in this code.
~~the applicable ordinances.~~

Sec. 22-244. Emergency work.

For the purpose of remedying an emergency condition determined to be imminently dangerous to life, health, or property, nothing contained in this chapter will prevent the temporary construction, reconstruction, demolition, or other repairs to a historic structure, building, or site or a contributing or noncontributing property, structural improvement, landscape feature, or archaeological site within a designated historic district.

- (1) Such temporary construction, reconstruction, or demolition must take place pursuant to permission granted by the building official, and only such work as is reasonably necessary to correct the emergency conditions may be carried out.
- (2) The owner of a building or structure damaged by fire or natural calamity will be permitted to immediately stabilize the building or structure and to later rehabilitate it under the procedures required by this chapter.
- (3) The owner may request a special meeting of the historic preservation board to consider an application for a certificate of appropriateness to provide for permanent repairs.

Sec. 22-245. Demolition by neglect.

If the ~~director staff of the historic preservation board~~ or the building official informs the historic preservation board that a designated historic resource or contributing property within a historic district is being demolished by neglect, as defined pursuant to this chapter, the historic preservation board shall notify the owners of record by certified mail of its preliminary findings and intent to hold a public hearing no later than 35 calendar days from the date the notice was sent to determine evidence of neglect. The owner shall have until the time of the public hearing to make necessary repairs to rectify the evidence of neglect as identified in the certified notice. Upon failure by the owner to abate the structural, health, or safety hazards identified in the initial notice within 35 calendar days, the historic preservation board shall hold a public hearing to consider recommending to the building

official that the owner be issued a citation for code violation. The owner shall have the right to rebut the preliminary findings of the historic preservation board at the public hearing. If the historic preservation board finds that the building or structure is being demolished by neglect pursuant to this chapter, the historic preservation board may recommend to the building official that the owner be issued a citation for code violations and that penalties be instituted pursuant to this chapter.

**CHAPTERS 23–25
RESERVED**

Exhibit F

PROPOSED ADOPTION OF CHAPTER 26 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 26 MARINE FACILITIES; ~~STRUCTURES AND EQUIPMENT¹~~

ARTICLE I. IN GENERAL

Sec. 26-1. Enforcement and penalties.

~~Secs. 26-21--26-40. Reserved.~~

ARTICLE II. SEAWALLS, BULKHEADS, DOCKS, AND OTHER SHORELINE SIMILAR STRUCTURES

Division 1. Generally

Sec. 26-41. Definitions.

Sec. 26-42. Reserved. ~~Violation of article, penalty.~~

Sec. 26-43. Applicability of article.

Sec. 26-44. Compliance with other applicable regulations.

Sec. 26-45. ~~Permits required; inspections.~~

Sec. 26-46. Variances.

Sec. 26-47. Exemption from setback requirement.

Sec. 26-48. Nonconforming marine structures.

~~Secs. 26-49⁸--26-70. Reserved.~~

Division 2. Location and Design

Sec. 26-71. Docks and boat ramps. Structures associated with single-family residential land uses.

Sec. 26-72. Dock boxes. Docking facilities in natural water bodies.

Sec. 26-73. Fishing piers or observation decks.

Sec. 26-74. Boathouses.

~~Sec. 26-73. Seawalls and riprap revetment~~

Sec. 26-75. Seawalls and retaining walls generally.

Sec. 26-76. Seawalls and retaining walls along artificial water bodies.

Sec. 26-77. Seawalls and retaining walls along natural water bodies.

Sec. 26-78. Riprap revetment.

Sec. 26-79. Protection of vegetation during construction.

Sec. 26-80. Turbidity.

Sec. 26-81. Marina design and location.

Sec. 26-82. Dredging, new and maintenance.

~~Secs. 26-74 83--26-11087. Reserved.~~

~~**Division 3. Mangrove Alteration and Design**
[deleted in its entirety]~~

ARTICLE III. MARINE SANITATION

Sec. 26-111. Purpose of article.

Sec. 26-112. Reserved. Definitions.

Sec. 26-113. Reserved. Penalty for violation of article; injunctive relief.

Sec. 26-114. Applicability of article.

Sec. 26-115. Discharge of waste material prohibited.

Sec. 26-116. Marina sanitation facilities.

ARTICLE I. IN GENERAL

Sec. 26-1. Enforcement and penalties.

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 chapter.

~~Secs. 26-21--26-40. Reserved.~~

ARTICLE II. SEAWALLS, BULKHEADS, DOCKS, AND OTHER SHORELINE SIMILAR STRUCTURES

DIVISION 1. GENERALLY

¹Cross reference(s)—Coastal construction code, § 6-331 et seq.; marina design, § 10-257; wetlands protection, § 14-291 et seq.; mangrove enforcement, § 14-451 et seq.; zoning regulations pertaining to marine facilities, § 34-1861 et seq.

Sec. 26-41. 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:

Access walkway means ~~that the~~ portion of a ~~water-oriented structure which that~~ allows access to a docking facility or terminal platform, ~~or provides a way along the structure from the shore.~~

Administrator [deleted]

Boathouse means a roofed structure built constructed over or adjacent to water to provide a covered mooring or storage place for watercraft. For purposes of this definition, a structure shall be considered adjacent to water if the nearest landward point of the structure is located no farther than 25 feet from the mean high-water line.

Boat ramp means an inclined and paved stabilized surface that extends into the water from the shore and upon which trailerable watercraft can be launched and retrieved.

Commercial boats [deleted]

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee, director of the division of codes and building services, or his successor or designee, as the party designated by the Board of County Commissioners to issue building permits, to conduct inspections and to enforce the provisions of this article.

Dock box [deleted]

Docking facility means a ~~water-oriented~~ structure designed primarily for the launching, retrieval, storage, or mooring of watercraft.

Exterior property line means the side lot line or riparian property line separating two or more lots or parcels under common ownership from the adjoining lots or parcels under separate ownership.

Finger pier means a ~~narrow pier branching dock~~ landing that branches from an access walkway or terminal platform to form a watercraft slip ~~thereby~~

providing and provides direct access to watercraft moored in the slip.

Hazard to navigation means a structure erected or under construction, or a moored watercraft, which obstructs the navigation of watercraft proceeding along a navigable channel or canal, or which obstructs reasonable riparian access to adjacent properties.

Invasive exotic vegetation means Australian pine (*Casuarina spp.*), Brazilian pepper (*Schinus terebinthifolius*), paper or punk tree (*Melaleuca quinquenervia*), and earleaf acacia (*Acacisa Auriculiformis*), and primrose willow (*Ludwigia peruviana*).

Littoral zone [deleted]

Mangrove shall have the same meaning as ~~provided by the Florida Administrative Code.~~ means any specimen of the species black mangrove (*Avicennia germinans*), white mangrove (*Laguncularia racemosa*), or red mangrove (*Rhizophora mangle*).

Mangrove alteration [deleted]

Marginal dock means a dock that runs parallel and adjacent to the shoreline. This term includes docks with a maximum access walkway length of 25 feet to a dock running parallel to the shoreline and adjacent to wetland vegetation.

Marina has the meaning provided in § 34-2.

Mean high water means the average height of the high waters over a nineteen-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean nineteen-year value. ~~has the same meaning as provided by the Florida Statutes.~~

Mean high-water line means the intersection of the tidal plane of mean high water with the shore. ~~has the same meaning as provided by the Florida Statutes.~~

Mean low water means the average height of the low waters over a nineteen year period. For shorter periods of observation, "mean low water" means

the average height of the low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean nineteen-year value. ~~has the same meaning as provided by the Florida Statutes.~~

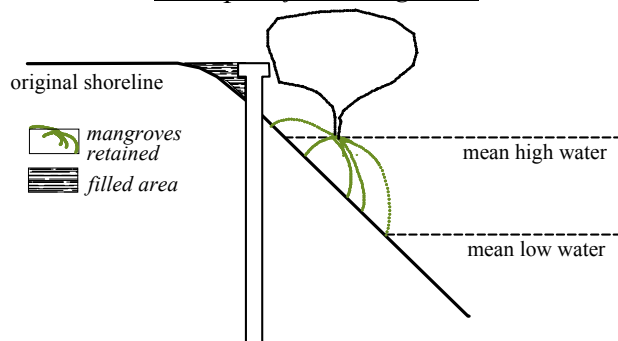
Mean low-water line [deleted]

Multi-slip docking facility has the meaning provided in § 34-2.

Navigable channel means the area within a natural or artificial water body which that will allow passage of a watercraft drawing three feet of water; at mean high low water.

Nonconforming marine structure means any type of structure permitted by this chapter which was lawful prior to the adoption of any ordinance from which this chapter is derived, or the adoption of any revision or amendment to this chapter, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements of this chapter.

Example of retaining wall:



Permit required [deleted]

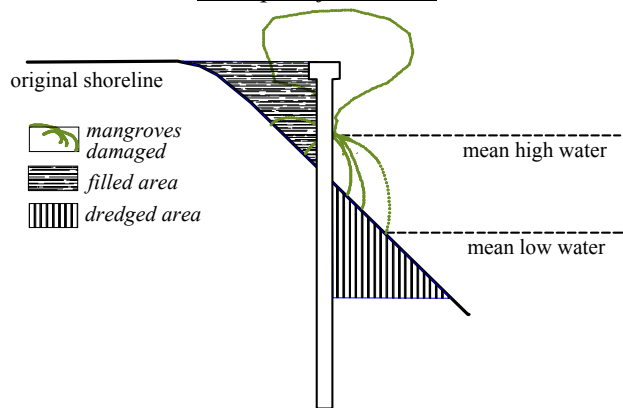
Private single-family dock means a dock designed and intended to serve as an accessory use to an existing or proposed single-family dwelling unit.

Recreational boats [deleted]

Retaining wall means a vertical bulkhead constructed landward of the mean high-water line and landward of wetland vegetation.

Seawall means a vertical bulkhead constructed seaward of the mean high-water line or seaward of the upper reaches of wetland vegetation.

Example of seawall:



Seaward [deleted]

Watercraft Slip means that part of a structure and adjoining tie-up area designed to moor a single watercraft. a watercraft mooring area formed by an L-shaped or U-shaped configuration of piers or mooring piles, or a combination of both, to allow mooring and access to watercraft.

Water-oriented sStructure refers to a water-oriented facility and includes, without limitation, any dock, boardwalk, floating dock, fishing pier, pier, wharf, observation deck, walkway, deck, platform, boathouse, mooring piling, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, or boatramp, or any other obstacle, obstruction, or protrusion used primarily for the landing, launching, or mooring storage of watercraft, erosion control and shoreline stabilization, or for water-oriented activities. ~~For brevity, the term "structure," when used in this article, means "water-oriented structure."~~

Terminal platform means that the part of a docking facility that is connected to and generally wider than the access walkway and that is used both for securing and loading a vessel.

TERMINAL PLATFORMS,
CONFIGURATION EXAMPLES
[delete figure]

Tie-up area means that portion of a docking facility to which the water adjacent to a dock designed to be occupied by moored watercraft. ~~may~~

be moored in the absence of a terminal platform or watercraft slip.

Water body means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293. means an artificial or natural body of water and associated wetlands having access to navigable waters of the United States and located in the unincorporated areas of the county. For purposes of this article, the term “waterway” shall have the same meaning as the term “water body.”

- (1) Artificial water bodies are man-made canals and similar water bodies that extend natural water bodies into uplands.
- (2) Natural water bodies include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces.

Watercraft includes, without limitation, means any vehicle designed for transporting persons or property on, in or through water.

Work includes, but is not limited to, all dredging or disposal of dredge material, excavation, filling, construction, erection, or installation, or any addition to or modification of a structure on a water body. waterway within the unincorporated area of the county. The term “work” shall not include minor repairs or maintenance as exempted under §§ 26-71, 26-72 or 26-73.

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

Sec. 26-42. Reserved. Violation of article; penalty:

(a) If a dock or seawall is constructed without a county building permit, and does not meet the requirements of this article, then it will either have to be removed totally or modified in such a way to meet the requirements of this article:

(b) Any person violating any provision of this article, or conditions of a hardship variance issued under this article, shall be subject to a penalty of twice the building permit fee, up to \$250.00.

(c) Each day of work, or work on any structure as defined in this article, without first having secured applicable permits shall be deemed to be a separate offense. In addition to or in lieu of the penalties provided by general law for violation of ordinances, the Board of County Commissioners, the director, the administrator or an affected party may bring injunctive action to enjoin the continuance of work, or work on any structure as defined in this article, in violation of this article.

Sec. 26-43. Applicability of article.

(a) This article describes the only non-governmental marine structures that may be constructed within the “Tidal Waters” designation on the comprehensive plan’s future land use map.

- (1) The marine structures described in this article may be permitted only within riparian extensions of property lines or on owned or leased submerged lands.
- (2) These marine structures must be related to accessory uses that are allowed in conjunction with a permitted principal use on the adjoining land. See § 34-1171 through 34-1174 for general regulations on accessory uses.

(b) The terms and provisions of this article shall apply to all structures as defined under this article lying within the unincorporated area of the Town of Fort Myers Beach, county, except that the maintenance of or minor repairs to any currently usable structure defined under this article in a manner consistent with the intent of this article and to the extent reasonably necessary in order to maintain or repair the structure for purposes of keeping in good condition the existing structure shall be excepted. This exemption shall not be construed to mean construction of a new structure where one did not exist or new construction of additions to any structure which would increase the area of the existing structure.

Sec. 26-44. Compliance with other applicable regulations.

All work in connection with any structure located in, on, over or adjacent to any waterway located within the unincorporated area of the county shall be in accordance with applicable local rules, regulations, ordinances or codes. Local county approval shall Permits issued in accordance

with this chapter, or development orders for work in the town, do not eliminate the need for obtaining associated to obtain all applicable state and federal agency permits where applicable.

Sec. 26-45. Permit; inspections: Permits required.

(a) A permit is required prior to starting any work addressed by this article, except where explicitly stated otherwise. All work shall be evaluated and approved by the administrator or his designee prior to the issuance of a permit by the director or his designee, to ensure that such activities are compatible with the intent of this article. Any authorization of work on structures by the county does not convey a property right or authorize any injury to property or invasion of other rights:

(b) All requests for a permit relative to work in accordance with the provisions of this article shall be submitted in writing to the administrator or his designee, and shall include an overall site plan of the area, including dimensions. The written application shall include but not be limited to the following:

- (1) Whether or not the applicant has secured all state and federal agency permits, and copies of the permits, where applicable. In the case of need for a submerged lands lease from the state department of environmental protection, approval from the county is required first.
- (2) A statement of the relative extent of the public and private need for the proposed structure or work.

A development order is required for private residential multi-slip commercial docking facilities; however, exemptions are possible under the provisions of this Land Development Code.

(b) Permit applications must be submitted to the director on an appropriate form containing the following:

- (1) The names, addresses, and telephone numbers of the property owner(s);
- (2) The name, address, and telephone number of the property owner's agent, if applicable;
- (3) Written authorization from the property owner to the agent, if applicable;
- (4) The property street address;
- (5) The property STRAP number;

- (6) A site plan, showing the following:
 - a. the proposed location of the work relative to riparian property lines; and
 - b. dimensions and side setbacks of all proposed structures or work.
- (7) Copies of all necessary state and federal agency approvals; and
- (8) The appropriate fee.

(c) Work relating to commercial or multi-slip docks may require a development order in accordance with ch. 10 and construction drawings sealed by a professional engineer or registered architect. All development order applications will be reviewed for compliance with this article.

(d) The director has the discretion to require construction drawings sealed by a professional engineer or registered architect and a sealed boundary or record survey identifying the property boundary or riparian extensions into the water body in relation to construction or work. The director also has the discretion to require submission of a sealed post-construction as-built survey certified to the town prior to issuance of a certificate of completion for any permit under this section.

(e) The director or his designee may conduct on-site inspections as needed to determine if the proposed work or structure meets the required minimum standards in accordance with local codes.

(f) A permit is required to replace an existing structure; however, ordinary minor repairs may be made without a permit to the extent allowed by § 6-111 of this code.

(g) The director can authorize minor design alterations necessary to comply with the Americans with Disabilities Act.

(h) Permit approvals granted under this section will be based upon the information submitted by the applicant. An approval under this section does not constitute a legal opinion regarding the riparian rights boundaries of the subject property or adjacent property and may not be used to substantiate a claim of right to encroach into another property owner's riparian rights area.

Sec. 26-46. Variances.

Requests for variances from the terms of this article shall be administered and decided in conformance with the requirements for variances which are set forth in ch. 34.

Sec. 26-47. Exemption from setback requirement.

Any structure permitted under this article shall not be subject to the water body 25-foot setback requirements from a bay, canal or other water body set out as contained in ch. 34.

Sec. 26-48. Nonconforming marine structures.

Except where prohibited for boathouses by § 26-74(d) and for seawalls by § 26-77, a nonconforming marine structure may be repaired, replaced, or altered if:

- (1) the size, dimensions, design, and location of the structure is and will remain otherwise in compliance with all existing regulations; or
- (2) the proposed work will not cause an increase in the nonconformity, in the opinion of the director.

Secs. 26-489--26-70. Reserved.

DIVISION 2. LOCATION AND DESIGN

~~Sec. 26-71. Structures associated with single-family residential land uses. [deleted in its entirety]~~

Sec. 26-71. Docks and boat ramps.

Docks and boat ramps will be permitted only in accordance with the following regulations:

- (a) **Number of docks and slips.**
 - (1) No more than one two-slip private single-family dock is permitted to extend from each lot into a natural water body, except that a shared property line dock can be approved for up to four slips.
 - (2) Handrails may be required to prohibit the mooring of watercraft in any area not designated as a slip. Handrails must be permanently maintained.

(b) Length of docks. No private single-family dock, including its tie-up area, may be permitted or constructed in a natural or artificial water body exceeding the following lengths:

- (1) 25% of the navigable channel width, up to a maximum of 200 feet in length; or up to a maximum of 300 feet in length if the director, in his sole discretion, finds that:
 - a. The proposed dock has been approved by all applicable state and federal agencies;
 - b. The increased length will not result in a hazard to navigation;
 - c. The proposed dock is compatible with docks or other structures and uses on adjoining lots; and
 - d. The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.
- (2) All measurements are from the mean high-water line seaward. Tie-up areas that are waterward of the dock will be deemed 10 feet in width.

(c) Maximum dimensions of docks.

- (1) Private single-family docks in natural water bodies must comply with the following maximum dimensional requirements:
 - a. Access walkway – 4 feet wide
 - b. Terminal platform – 160 square feet
 - c. Finger piers – 3 feet wideThe application of these regulations is illustrated in Figure 26-1.
- (2) Single-family residential boat ramps can not exceed 15 feet in width.

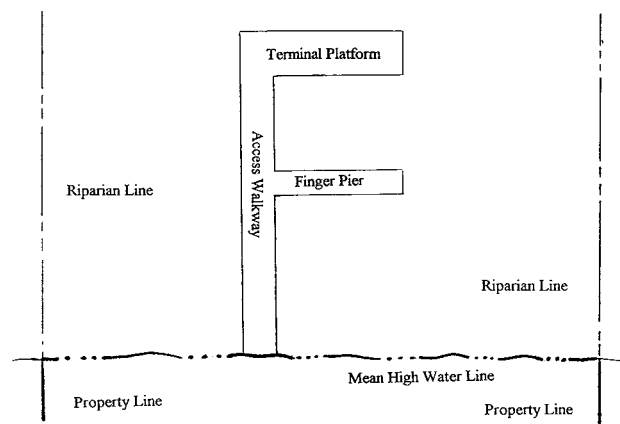


Figure 26-1 – Private Single-Family Structure Plan View

(d) Setbacks.

- (1) Multi-slip and marina docks, except boat davits, in or adjacent to natural water bodies must be set back a minimum of 25 feet from all adjoining side lot lines.
- (2) Private single-family docks in natural water bodies must be set back from all adjoining side lot and side riparian lines as follows:

 - a. Marginal docks – at least 10 feet.
 - b. All other docks – at least 25 feet.
- (3) Private single-family docks in artificial water bodies must be set back at least 5 feet from all adjoining side lot and side riparian lines.
- (4) Side setback requirements for docks can be reduced if:

 - a. Adjoining property owners propose a single dock for their joint use, or if they execute a written agreement in recordable form agreeing to a setback less than that required; and
 - b. Placement of such dock(s) will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
- (5) The director, in his discretion, may permit administrative deviations from the dock setbacks required by this subsection if the structure is located as close to the required setback as possible and:

 - a. The width of the subject parcel is not wide enough to permit construction of a single-family dock perpendicular to the shoreline at the midpoint of the shoreline property line without a deviation; or
 - b. If moving the structure closer to a property line than normally allowed would minimize damage to wetland vegetation or other environmental resources.

The director's decision under this subsection can be appealed through the procedure set forth in § 34-86 or the applicant may seek a variance in accordance with § 34-87.
- (6) All boat ramps must set back at least 10 feet from all adjoining side lot and side riparian lines.

(e) Location.

- (1) Docks, tie-up areas, and moored watercraft cannot be located in a manner that will create a hazard to navigation in natural or artificial water bodies.

- (2) Boat ramps cannot be located in a manner that will result in a horizontal change in the mean high-water line.
- (3) The director has the discretion to require reconfiguration of a proposed dock or boat ramp to reduce impacts to the riparian rights of adjacent properties.

(f) Minimum water depths.

- (1) There must be a minimum depth of three feet below mean low water for all slips on private single-family docks in natural water bodies.
- (2) Water depths adjacent to and within a multi-slip dock or a marina must ensure that a minimum one foot clearance is provided between the deepest draft of a vessel and the bottom at mean low water or the top of marine resources (e.g. seagrasses).

Sec. 26-72. Docking facilities in natural water bodies: *[deleted in its entirety]*

Sec. 26-72. Dock boxes

Dock boxes on private single-family docks may not exceed three feet in height and 100 cubic feet in volume. Such dock boxes do not require building or marine facility permits.

Sec. 26-73. Fishing piers or observation decks.

Fishing piers or observation decks may be permitted in areas where water depth is insufficient for mooring. Fishing piers and observation decks must:

- (a) be designed to prohibit watercraft mooring;
- (b) be constructed to provide access walkways and terminal platforms at 5 feet above mean high water;
- (c) have fixed handrails, including intermediate rails, installed around the perimeter of the structure; and
- (d) have a “no boat mooring” sign placed facing the water on the terminal platform of the structure.

Sec. 26-74. Boathouses.

The following regulations apply to boathouses associated with a private single-family residence. Only a single boathouse may be associated with each single-family residence.

(a) **Location.**

- (1) Boathouses must be constructed adjacent to or over a water body. Any boathouse constructed over land must be located, in its entirety, within 25 feet of the mean high-water line.
- (2) Boathouses may not be built over submerged bottoms containing areas of dense seagrasses or shellfish beds.
- (3) Boathouses, boat lifts, and davits designed with mooring inside the structure may not extend beyond 25% of the width of a navigable channel.

(b) **Setbacks.** The minimum setbacks between boathouse pilings and side lot lines and riparian lot lines are as follows:

- (1) Natural water bodies -- 25 feet.
- (2) Artificial water bodies -- 10 feet.

When a boathouse is constructed on or adjacent to two or more adjoining lots under common ownership and control, the setbacks will be measured from the exterior property lines.

(c) **Design criteria.**

- (1) **Maximum area.** A boathouse may not encompass more than 500 square feet of roofed area.
- (2) **Height.** The maximum height of a boathouse is 20 feet above mean high water, as measured from mean high water to the highest point of the boathouse.
- (3) **Permitted uses.**
 - a. Use of a boathouse for living or fueling facilities is prohibited.
 - b. Up to 25% of the total roofed area of a boathouse can be used for storage of items that relate directly to the use and maintenance of watercraft. Items that do not relate directly to the use and maintenance of watercraft may not be stored in a boathouse.
- (4) **Decking.** Access walkways not exceeding four feet in width are permitted in the area under the roof of a boathouse located over water. Additional decking in the area under the roof of a boathouse is prohibited.
- (5) **Enclosure.**
 - a. Boathouses located over a water body or adjacent to a natural water body must be open-sided. Safety rails 42 inches high or less are permitted.

b. Boathouses located adjacent to an artificial water body must meet the following requirements:

1. The boathouse must be open-sided if the proposed side setback is between ten and 25 feet.
 2. The boathouse may be open-sided or enclosed with wood lattice or similar fencing materials if the side setback is 25 feet or more.
- (6) **Roof.** Boathouses shall have pitched roofs with a minimum slope of 2 vertical to 12 horizontal. Sundecks shall not be permitted on the roof of any boathouse.
- (7) **Wind load standards.** All boathouses must comply with the building code wind load standards as adopted in ch. 6.

(d) **Amortization of certain nonconforming boathouses.** The size and location of boathouses have been regulated since the adoption of Lee County Ordinance No. 88-56. Some boathouses built prior to 1988 or expanded in violation of Ordinance No. 88-56 remain in existence. Such boathouses cannot be modified or rebuilt except when brought into compliance with current regulations, and all such boathouses must be modified into compliance with this section by January 1, 2004.

The application of these regulations is illustrated in Figure 26-2 below:

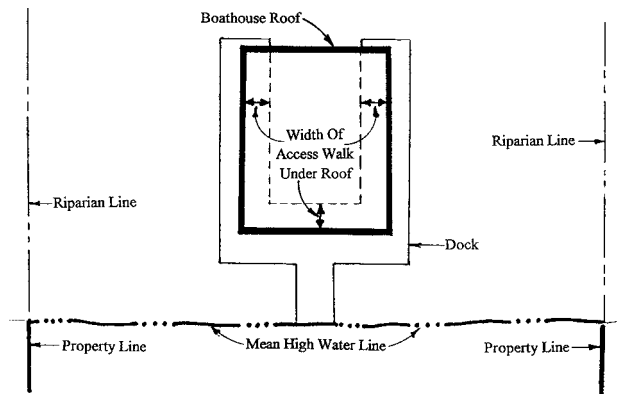


Figure 26-2 – Boathouse Plan Review

~~Sec. 26-73. Seawalls and riprap revetment. The following shall apply to seawalls and riprap revetment:~~

- ~~(1) **Control of turbidity.** Turbidity screens must be used during installation of a structure.~~

- ~~(2) *Artificial upland canals.* An adequate littoral zone must be present, and an adequate setback from the landward extent of aquatic vegetation, including mangrove prop roots and pneumatophores, is required for construction of a seawall. If wetlands vegetation dies within one year as a result of seawall installation, it shall be replaced with the same species and numbers at the property owner's expense. These guidelines do not apply in an individual canal with a minimum of 50% of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls.~~
- ~~(3) *Natural water bodies.* In natural water bodies, including canals created from sovereign lands, seawalls are not allowed except where no reasonable alternative exists. Retaining walls built landward of mean high water and in agreement with the setbacks as detailed in subsection (2) of this section will be allowed.~~

Sec. 26-75. Seawalls and retaining walls generally.

(a) See the definitions in § 26-41 to understand the important distinctions between seawalls and retaining walls, and between natural and artificial water bodies.

(b) The town encourages owners of existing seawalls to replace them with riprap revetment and/or the planting of mangroves.

(c) Except as provided in this division, and where the director determines there is no reasonable alternative, seawalls and retaining walls must be placed landward of the mean high-water line and landward of all wetland vegetation, including mangrove prop roots and pneumatophores.

(d) Ordinary minor repairs to seawalls and retaining walls may be made in accordance with § 26-45(f). Replacement of seawall caps or repairs to seawall seams shall require the installation of a shallow swale or linear drain in accordance with § 26-76(a), but shall not require the installation of shallow-water habitats in accordance with § 26-76(b). Replacement of more than 25% of vertical seawall slabs shall require the installation of shallow-water habitats in accordance with § 26-76(b) for the entire length of the seawall or retaining wall.

Sec. 26-76. Seawalls and retaining walls along artificial water bodies.

(a) When a landowner wishes to build a new or replacement seawall or retaining wall along an artificial water body, it shall be constructed with a shallow swale or linear drain immediately landward of the wall's cap.

- (1) The purpose of this swale or drain is to direct surface water runoff underground rather than directly into the water body.
- (2) Figures 26-3, 26-4, and 26-5 show acceptable configurations for this swale or drain, and each also shows how it could be built in front of an existing failing seawall.
- (3) Each figure shows coarse aggregate forming a chamber to hold stormwater before it flows through weep holes in the seawall or retaining wall.
- (4) The director may accept an alternate configuration proposed by an applicant if it provides equivalent water quality protection.

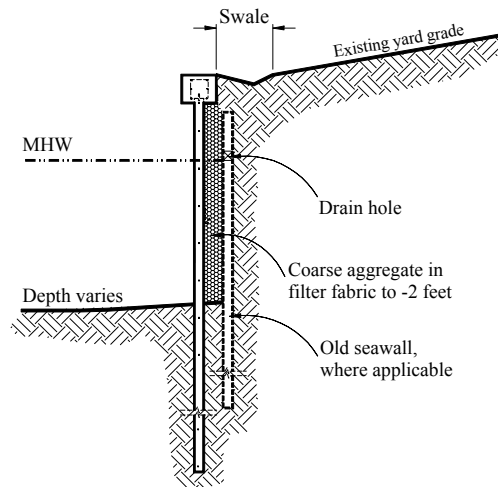


Figure 26-3

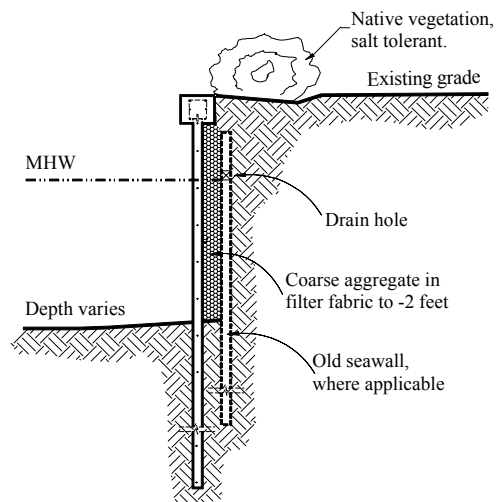


Figure 26-4

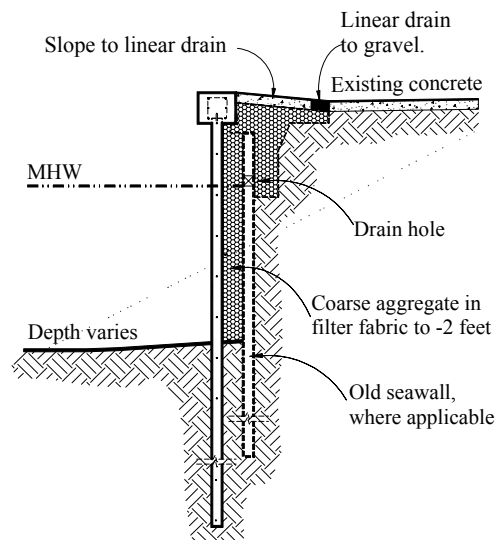


Figure 26-5

(b) When new or replacement seawalls are permitted in an artificial water body below the mean high-water line in accordance with § 26-75(c), shallow-water habitats must be created immediately seaward of the seawall.

- (1) Desirable foundations for shallow-water habitats are illustrated in Figures 26-6, 26-7, 26-8, 26-9, and 26-10.
- (2) Shallow-water habitats need not be created where they would interfere with identified watercraft tie-up areas but otherwise shall be placed along the entire length of seawalls including underneath docks.
- (3) The director may accept an alternate configuration proposed by an applicant provided that it provides equivalent habitat.

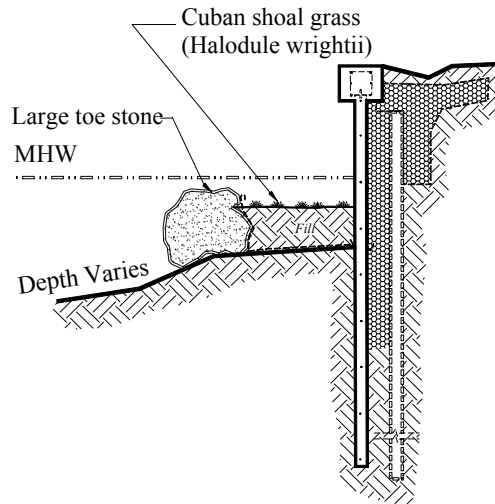


Figure 26-8

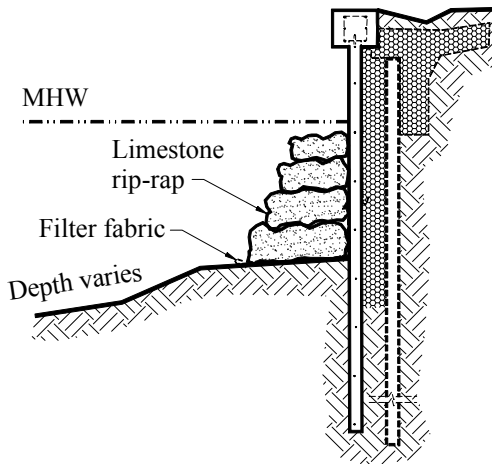


Figure 26-6

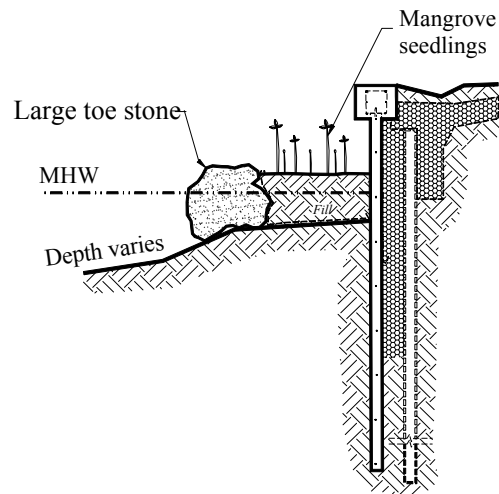


Figure 26-9

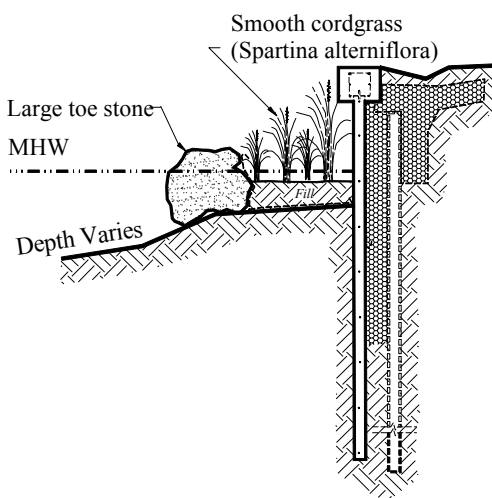


Figure 26-7

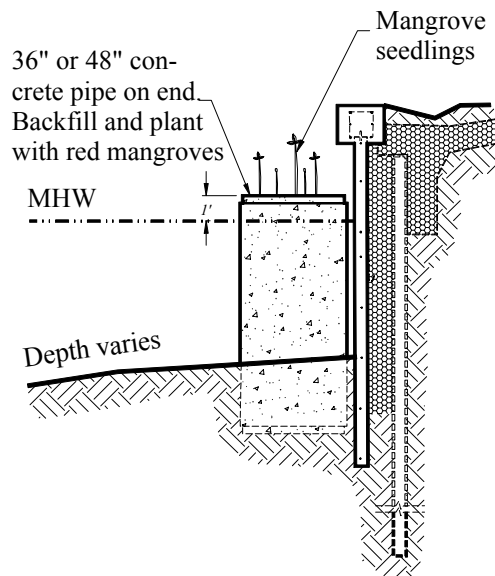


Figure 26-10

Sec. 26-77. Seawalls and retaining walls along natural water bodies.

(a) The Fort Myers Beach Comprehensive Plan, primarily through Policy 5-D-1, strictly regulates hardened structures along the natural shoreline.

(b) New or expanded seawalls are not allowed along natural water bodies. Retaining walls are permitted along natural water bodies, except along the Gulf of Mexico.

(c) Existing seawalls along natural water bodies other than the Gulf of Mexico may be maintained, but may not be rebuilt if one or more of the following conditions exists:

- (1) if buildback could cause excessive shoreline erosion or endanger shorelines of surrounding properties; or
- (2) if buildback could be a threat to public safety or could block access to state-owned land or beaches; or
- (3) if buildback would threaten wetlands; or
- (4) if buildback would be more than one foot waterward of the existing seawall alignment on adjacent shorelines.

If none of these four conditions exist and a replacement seawall is permitted, the replacement seawall must be constructed in the same manner as specified in § 26-76(a) and (b).

(d) Existing seawalls and retaining walls along the Gulf of Mexico may be maintained, but may not be rebuilt.

- (1) The town has established the following priorities to protect buildings along the Gulf of Mexico prior to publicly sponsored beach renourishment:
 - a. first, allow the building to be moved away from the shoreline;
 - b. second, allow emergency renourishment (including the use of trucked-in sand on the beach);
 - c. third, allow a temporary riprap revetment if the first two priorities are not possible.
- (2) Any use of other hardened surfaces or structures along the Gulf of Mexico is strongly discouraged by the Fort Myers Beach Comprehensive Plan and would require a specific variance from this article.

Sec. 26-78. (4) Riprap revetment.

- (a 1) The toe of the Riprap shall ~~must~~ be located and placed so as not to damage or interfere with the growth of aquatic wetland vegetation.
- (b 2) Material used for riprap should be sized properly for intended use and ~~should be~~ installed on top of filter-~~X~~ fabric or equivalent material to prevent erosion of the subgrade.
- (3) Mangroves or other approved wetland vegetation must be planted 3 feet on center in compliance with § 26-76(c) for added shoreline stabilization and ecological benefit within the riprap. Other wetland mitigation techniques may be considered in lieu of vegetation planting. However, no vegetation planting is required for riprap revetments constructed in an artificial water body surrounded by uplands when the canal has a minimum of 50% of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls.

Sec. 26-79. Protection of vegetation during construction.

(a) *Specific permit conditions.* Conditions for the protection of shoreline vegetation can be placed on permits issued in accordance with this article. The conditions can include the method of designating and protecting mangroves to remain after construction, replacement planting for mangroves removed due to construction, and required removal of invasive exotic vegetation.

(b) *Mangrove removal.*

- (1) *Docks, fishing piers, and observation decks.* Mangrove removal necessary for access walkway construction is limited to the minimum extent necessary to gain access to the structure. To the greatest extent possible, the access must be located to:
 - a. use existing natural openings;
 - b. use areas infested with invasive exotic vegetation;
 - c. avoid larger mangroves; and
 - d. provide a maximum width of four feet and a maximum height of eight feet above the level of the walkway base.

(2) Seawalls, retaining walls, and riprap revetment.

- a. Mangrove removal in conjunction with construction of riprap revetment, seawalls, or retaining walls along natural water bodies is prohibited.
- b. Mangrove removal in artificial water bodies is prohibited for retaining walls and riprap revetments.
- c. Mangrove removal in artificial water bodies is permitted when such removal is unavoidable due to authorization of a seawall in accordance with § 26-75(c), and then only to the extent specifically indicated on the permit.

(c) Mangrove replacement and plantings.

- (1) For each mangrove removed due to lawful construction, three mangroves must be replanted at an alternate location on the subject property. If planting on the subject property is not appropriate, alternative forms of mitigation, such as payment into a mitigation bank, may be allowed.
- (2) Mangrove plantings must be container grown, no less than one year old, eight inches in height, and have a guaranteed 80% survivability rate for at least a 5-year period. Mangrove plantings must be planted 3 feet on center. Mangrove replanting is required if the 80% survivability rate is not attained.

(d) Damage to vegetation. If there is damage to wetlands vegetation beyond that authorized by the permit within one year of the installation of a seawall, retaining wall, or revetment, the dead vegetation must be replaced at the property owner's expense with the double the plantings that would have been required in accordance with subsection (c).

Sec. 26-80. Turbidity.

(a) All structures must be placed so as to provide the least possible impact to aquatic or wetland vegetation.

(b) During work that will generate turbidity, turbidity screens must be installed and properly maintained until turbidity levels are reduced to normal (ambient) levels.

Sec. 26-81. Marina design and location

(a) Marina design, uses, and locations must be consistent with Policies 4-B-6, 4-B-7, and 5-E-7 of the Fort Myers Beach Comprehensive Plan and all portions of this code.

(b) Refer to ch. 10 and 34 for more detailed design, use, and locational requirements for marinas.

Sec. 26-82. Dredging, new and maintenance.

(a) Incidental dredging. Dredging that is incidental to construction allowed by this article may be approved on the same permit, provided that:

- (1) All dredging limits must be clearly defined;**
- (2) Methods to control turbidity and dispose of dredging spoil must be indicated; and**
- (3) The proposed dredging is determined by the director to be the minimum necessary to accommodate construction and reasonable use of the permitted structure.**

(b) Channel dredging and beach renourishment. Town-sponsored projects involving maintenance dredging of canals or beach renourishment do not require a permit under this article, but must be approved in accordance with ch. 2, article VI. Privately sponsored dredging projects other than those specified in subsection (a) must obtain a permit under this article and a development order pursuant to ch. 10, and must be fully consistent with this code and the Fort Myers Beach Comprehensive Plan, including the habitat protection requirements of the conservation element.

Secs. 26-74 83--26-87110. Reserved.

DIVISION 3. MANGROVE ALTERATION AND DESIGN

Sec. 26-88. Purpose of division. *[deleted in its entirety]*

Sec. 26-89. Review procedure. *[deleted; portions have been relocated to § 26-77]*

Sec. 26-90. Alteration standards. *[deleted; portions have been relocated to secs. 26-75, 26-77, and 26-78]*

~~Sec. 26-91. Planting standards. [deleted in its entirety]~~

~~Sec. 26-92. Exceptions. [deleted in its entirety]~~

~~Sec. 26-93. Waiver of setback requirements. [deleted in its entirety]~~

~~Sec. 26-94. Variances. [deleted in its entirety]~~

~~Sec. 26-95. Penalty for violation of division. [deleted in its entirety]~~

~~Secs. 26-96–26-110. Reserved.~~

ARTICLE III. MARINE SANITATION²

Sec. 26-111. Purpose of article.

The purpose of this article is to protect the water quality and the health of the citizens of the town and county from pollution resulting from sewage and other waste or discharges from marine-related activities.

~~Sec. 26-112. Reserved. Definitions. [deleted in its entirety]~~

~~Sec. 26-113. Reserved. Penalty for violation of article; injunctive relief.~~

~~Any person who is convicted of violating the provisions of this article shall be subject to punishment as provided in § 1-5. Each day that such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this section. In addition to such penalties, the Board of County Commissioners or any affected party may bring injunctive action to enjoin any violation of this article.~~

Sec. 26-114. Applicability of article.

(a) This article shall apply to waters of the unincorporated areas of the Town of Fort Myers Beach county.

(b) This article shall be operative to the extent that it is not in conflict with F.S. ch. 327 or any other state or federal regulation.

Sec. 26-115. Discharge of waste material prohibited.

(a) It is unlawful for any person to discharge or permit or control or command to discharge any raw sewage, garbage, trash, or other waste material into the waters of the Town of Fort Myers Beach county.

(b) Every vessel owner, operator, and occupant shall comply with United States Coast Guard regulations pertaining to marine sanitation devices and with United States Environmental Protection Agency regulations pertaining to areas in which the discharge of sewage, treated or untreated, is prohibited.

(c) The marine sanitation provisions found in F.S. § 327.53 apply to the waters of the Town of Fort Myers Beach and may be enforced through any of the methods provided by this code.

Sec. 26-116. Marina sanitation facilities.

(a) Any marina which provides mooring for boats for live-aboard purposes with installed onboard sewer systems which are not designed and approved for overboard discharge must have:

- (1) Public restrooms with facilities for sewage disposal and bathing; and
- (2) A sewage disposal system to which all live-aboard vessels can pump out, and such system must be approved by the county.

(b) ~~Overboard disposal of refuse is prohibited.~~

(b) ~~(c)~~ All garbage shall be collected at least once a week and transported in covered vehicles or covered containers. Burning of refuse in the marina is prohibited.

(d) ~~Any class II marina not in conformity with this section shall have one year from the date of passage of the ordinance from which this article is derived to conform.~~

²Cross reference(s)–Zoning regulations pertaining to marine facilities, § 34-1861 et seq.