FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 10
DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

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ARTICLE I.
IN GENERAL

Sec. 10-1. Definitions and rules of construction.

(a) ***Rules of construction and analogous words and terms.*** For the purpose of this chapter, the following analogous words and terms shall be interpreted to have similar meanings when not inconsistent with the context:

(1) The word "constructed" includes the words "erected," "built," "installed," "rebuilt," and "repaired."
(2) The word "lot" includes the word "plot," "parcel," or "tract."
(3) The word "structure" includes the word "building."
(4) The word "subdivider" includes the word "developer," and the word "developer" includes the word "subdivider."
(5) Where this chapter refers to a specific federal, state, county, or town agency, department, or division, it shall be interpreted to mean "or any succeeding agency authorized to perform similar functions or duties."

(b) ***Definitions.*** Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words, and their derivations will have the meaning given in this subsection when not inconsistent with the context:

Abutting means any property that is immediately adjacent to, or contiguous with, or that is located immediately across from any street, canal, easement or water body, not to exceed 25 feet from the other property.

Access point means an accessway or driveway which provides vehicle access to a single parcel of land.

Accessway means land that is used or intended to be used for ingress or egress to abutting parcels of land and is not dedicated to the public. Accessways include access points to commercial, and other types of developments, except a single parcel of land containing two or fewer dwelling units in a single structure.

Applicant means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity, or their duly authorized representative, conducting activities under this chapter.

Application for a development order means the submission of the documents as required in this chapter to the director for review.

Building means any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for 50 percent of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof."

Connection means a driveway, accessway, street, or other means of providing access to or from local or major streets.

Consultant means an architect, attorney, engineer, environmentalist, landscape architect, planner, surveyor, or other person engaged by the developer to prepare documents required for a development order.

Controlled water depth means the vertical distance measured from the waterbody control elevation to the deepest point of the proposed waterbody.

Cul-de-sac means a turnaround at the end of a dead-end street.

Current pertains to the regulations in effect at the time an application for a development order is presented for acceptance or approval.

Dead-end street means a street having only one end open for vehicular access and closed at the other end.

Decision of the director means any act of the director in interpreting or applying this chapter to a particular request for a requirement waiver, limited review processing, or a development order, or any other request or matter relating thereto. In cases where making a decision involves the practice of engineering, as defined in F.S. § 471.005(6), where such decision shall be made only by a professional engineer or someone supervised by a professional engineer pursuant to F.A.C. § 21H-26.001, the

director must be a professional engineer, registered in the state. If the director is not a registered professional engineer, the director shall adopt the decision of a designated professional engineer, or the person who is designated to act on behalf of that professional engineer and who is supervised by that professional engineer, as the basis for whatever final formal decision is made by the director.

Density has the same meaning as in ch. 34 of this code.

DEP means the Florida Department of Environmental Protection.

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity commencing development.

Development means:
(1) A subdivision, as defined in this chapter; or
(2) Any improvement to land, as defined in this chapter.

Development area means the total horizontal area of the development property less any area within any existing public street right-of-way or easement.

Development order means a document issued by the director granting approval of the development based upon the submittal of the application for a development order, plans for development, plats, and all other documentation as applicable and required by this chapter.

Development permit has the same meaning as given for that term in F.S. § 163.3164(7).

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee. He shall oversee the intake of applications for completeness, oversee the review of plans for compliance with this chapter, and issue notifications to applicants.

Division and ***dividing of land*** mean:
(1) The act of describing, by metes and bounds, platting, or otherwise, one or more parcels of land which are lesser parcels of the original parcel or a recombination of lesser parcels or original parcels with another parcel for the purpose of conveying any interest in a parcel of land;
(2) The act of describing, by metes and bounds, platting, or otherwise, an easement or fee for accessway or right-of-way purposes;
(3) The act of conveying any of the interests in land described in subsection (1) or (2) of this definition; or
(4) The commencement of construction of a street, or a portion thereof, which is not platted.

Drainage system includes the roadside swales, curb and gutter, valley gutter, inlet piping, lateral swales, and related structures used to collect and transmit stormwater runoff from streets and lots to the detention or retention areas and percolation areas.

Driveway means a type of access point which provides vehicle access from a street to a single parcel of land containing two or fewer dwelling units in a single structure and from which vehicles may legally enter or leave the street in a forward or backward motion.

Dwelling unit has the same meaning as in ch. 34 of this code.

Easement means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes. Where the term "easement" is preceded by the term "street" or any other adjective, the preceding term describes the easement's purpose.

Engineer means a professional engineer duly registered and licensed by the state of Florida.

Excavation means the stripping, grading, or removal by any process of natural minerals or deposits, including but not limited to peat, sand, rock, shell, soil, fill dirt, or other extractive materials, from their natural state and location.

Excavation depth means the vertical distance measured from the lowest existing natural grade along the bank of the proposed excavation to the deepest point of the proposed excavation.

FDOT means the Florida Department of Transportation.

Historic district means a geographically definable area 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 district may also be composed of individual elements separated geographically but linked by association or history. A district may or may not be designated as a historic resource pursuant to ch. 22.

Historic resource means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value. These properties or resources may include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken, or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to history, government or culture. These resources may or may not be designated as an historic resource pursuant to ch. 22.

Impervious surface means those surfaces which do not absorb water, and includes all water bodies, structures, driveways, streets, sidewalks, other areas of concrete, asphalt, compacted layers of limerock or shell, and certain parking areas. In the case of storage yards, areas of stored materials constitute impervious surfaces.

Improvement to land means any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

Indigenous plant communities means those plant species which are characteristic of the major plant communities of the town as listed in § 10-413. Areas where invasive exotic vegetation has exceeded 75% of the plant species by quantity will not be considered indigenous plant communities.

Intersection means the general area where two or more roads, streets, accessways, or access points join or cross.

LBR means limerock bearing ratio.

Lot means a parcel of land considered as a unit.

Native means a plant of a species that occurred within the current Florida state boundary prior to European contact, according to the best available scientific and historical documentation. Certain Florida native plants occurred in indigenous plant communities in southwest Florida prior to significant human impacts and alterations of the landscape.

Owner means any person having a legal or equitable interest in property.

Parcel. See *Lot*.

Parking lot access means an accessway which provides vehicle access from a street to a parking lot containing 5 or more parking spaces, but from which vehicles are restricted to entering or leaving the street in a forward motion only.

Parking lot aisle means the portions (lanes) of a parking lot which provide direct access to individual parking spaces.

PCP (permanent control point) means a marker as defined in F.S. ch. 177.

Pedestrian way means a paved, surfaced path or way which is specifically designated or intended to be open to pedestrian travel, whether such facilities are intended for the exclusive use of pedestrians or not.

Permit means any official document or certificate required or issued by the town authorizing performance of a specified activity.

Person means any individual, partnership, association, corporation, trust, or other legal entity.

Plat means a plat as defined by F.S. ch. 177, as amended.

Private street means a street that:
(1) Is not dedicated to the public; or

(2) Has been dedicated to the public but the offer has not been accepted by the board through express action at a public hearing.

PRM (permanent reference monument) means a monument as defined in F.S. ch. 177.

Public street means a street that has been dedicated to the public and where the public, through use of the street, or the governing body, through express action at a public hearing, has accepted the offer of dedication. Regardless of the governing body's acceptance of the offer of public dedication, the governing body may or may not have accepted the street for maintenance purposes.

Roadway is a general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to transportation purposes, including the travelway, shoulders, and swales, but which has not been accepted by the board.

SFWMD means the South Florida Water Management District.

Sidewalk means a paved pedestrian way within or immediately adjoining a street right-of-way or easement.

Site-related road improvements means road capital 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 access points and roads;
(2) Median cuts made necessary by those access points or roads;
(3) Right and left turn and deceleration or acceleration lanes leading to or from those access points or roads;
(4) Traffic control measures for those access points or roads;
(5) Sidewalks on the development property or on an abutting right-of-way.
(6) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

Stormwater management system includes the detention or retention areas, percolation trenches, discharge structures, and outfall channels provided to control the rate of stormwater runoff within and from a development.

Street.

(1) The term "street" means:
   a. An accessway which affords the principal means of ingress or egress for two or more parcels of land; or
   b. A right-of-way or roadway which affords the principal means of ingress or egress for a parcel of land; or
   c. Any public thoroughfare that can support travel by motor vehicles.
(2) The term "street" is synonymous with the term "avenue," "boulevard," "drive," "lane," "place," "road," or "way," or similar terms.
(3) The following definitions distinguish and rank streets according to their different functional classifications:
   a. ***Street, major*** means streets that carry large volumes of traffic or that collect traffic from intersecting local streets and accessways. Access to abutting properties is a secondary function. Major streets in the town can be further classified as follows:
      1. *Arterial streets:* Matanzas Pass Sky Bridge, Estero Boulevard from the Sky Bridge to the Big Carlos Pass Bridge, and the Big Carlos Pass Bridge.
      2. *Major collector streets:* Estero Boulevard from the Sky Bridge to the entrance of Bowditch Point Park.
      3. *Minor collector streets:* Old San Carlos Boulevard, Crescent Street, Lenell Road, and Bay Beach Lane.
   b. ***Street, local*** means all streets other than major streets, whose primary function is to serve adjacent properties. Through volume service is not a function of local streets.
   c. ***Alley*** means a narrow service access to the rear of urban buildings that can provide service areas, vehicular and parking access, and public utilities, but which is not intended for general traffic circulation.

Street right-of-way is a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes, which has been dedicated to the public and accepted by the appropriate public body.

Street stub means a street having one end open for vehicular traffic and the other terminated without a turnaround for vehicles.

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

Subdivider means a person who creates a subdivision.

Subdivision.

(1) The act of subdividing land is a type of development. The term "subdivision" means the following:
   a. The division of a lot or tract into two or more lots, or two lots into three or more lots, or similar lot divisions; or
   b. The division of a lot, the result of which is the extension of an existing street or the establishment of a new street; or
   c. Creation of a condominium as defined in F.S. chs. 718 and 721, except that condominium developments are exempt from the provisions of this code that require platting under F.S. ch. 177.

(2) The following divisions are exempt from this definition:
   a. A division of land pursuant to a development platted or approved by the county prior to January 28, 1983, provided that all required improvements have been made or that a security for the performance of the improvements has been posted and is current;
   b. The division of land for the conveyance of land to a federal, state, county, or municipal government entity, or a public utility; and
   c. The division of land by judicial decree.

(3) The combination or recombination of up to 3 lots of record is not a subdivision provided that all resulting lots comply with ch. 34, the Fort Myers Beach Comprehensive Plan and all other applicable provisions of this code. Specific provisions relating to the recombination of up to 3 lots are contained in § 10-217.

(4) Subdivision includes resubdivision or redivision and, when appropriate to the context, shall also mean the process of subdivision or the land subdivided.

Surplus material means material that absolutely must be excavated in order to comply with permit requirements and which cannot reasonably be expected to be used on the same premises for any purpose.

Surveyor means a professional land surveyor duly registered and licensed by the state.

Turn lane means a width of pavement required to protect the health, safety, and welfare of the public and reduce adverse traffic impacts from turning movements generated by a development on to and off of a street. Turn lanes shall include and enhance turning, acceleration, deceleration, or storage movements of vehicles as required by this chapter.

Two-family has the same meaning as in ch. 34 of this code.

Unified control means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the town.

Water system means a system of pipes, pumps, water treatment plants, or water sources, and all other appurtenances or equipment needed to treat, transport and distribute water.

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

Sec. 10-2. Purpose of chapter.

(a) This chapter supplements the other chapters of this code by providing processes to review site plans for subdivisions of land and for multifamily, commercial, and institutional developments. Site plans and related submissions that meet the goals, standards, and regulations set forth in this code and in the Fort Myers Beach Comprehensive Plan are issued development orders that authorize the actual development of land.

(b) This chapter also provides engineering and environmental regulations that supplement other portions of this code. For example, this chapter includes standards for:

(1) Mandatory construction of sidewalks during development along major streets; see § 10-289.
(2) Approved piping materials for use in rights-of-way; see § 10-296(d).
(c) Driveways that cross drainage swales, including residential driveways; see § 10-296(o).
(4) Stormwater discharge and erosion control requirements; see § 10-601–608.

Sec. 10-3. Interpretation of chapter.

(a) This chapter shall be construed to be the minimum regulations necessary for the purpose of meeting the general and specific requirements named in this chapter. The provisions of this chapter are regulatory.

(b) Where any provision of this chapter imposes a restriction different from that imposed by any other provision of this chapter or any other ordinance, regulation, or law, other than definitions, the provision which is more restrictive shall apply. The definitions contained in this chapter shall be controlling for all provisions of this chapter, and definitions of these same terms contained in other duly adopted ordinances and regulations of the town shall not be construed to be applicable in this chapter.

Sec. 10-4--10-5. Reserved.

Sec. 10-6. Enforcement of chapter; penalty.

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.

Sec. 10-7. General requirements.

(a) Development in the town must be in compliance with this chapter, as well as local, state, and federal air, water, and noise pollution standards.

(b) Development in the town must be in compliance with the Fort Myers Beach Comprehensive Plan and all applicable town ordinances.

(c) Development orders or permits shall not be issued if they would cause public facilities and services to fall below the minimum level-of-service standards established in the Fort Myers Beach Comprehensive Plan, in accordance with procedures set forth in article II of ch. 2.

(d) Except as otherwise provided for in this chapter, permits for development, including building permits, shall only be issued after the issuance of, and in compliance with, a development order. No development permit, building permit, or tree removal permit shall be issued on a parcel of land, or any portion thereof, that is the subject of existing violations of this code, regardless of whether the applicant or his principal owned the property at the time the violation occurred. However, this subsection shall not prevent issuance of a permit for the specific purpose of resolving or abating the violation.

(e) During development and construction activities, the developer must take every reasonable precaution to avoid dust and debris from blowing onto adjacent properties. When, in the director's opinion, conditions are such that dust or debris is adversely affecting adjacent properties, a stop work order may be issued until the conditions are mitigated. The proposed method of mitigation, which may include temporary silt fencing, sprinkling the area with water, seeding, or sodding, or other similar measures, must be approved by the director.

(f) During development and construction activities, the developer must take every reasonable precaution to avoid undue noise or activities that might cause unreasonable impacts or nuisance to adjacent properties. If, in the director's opinion, construction activities could be, or are, generating noise, nuisance, or other adverse impacts that may unreasonably affect adjacent properties, he may establish reasonable working hours or other conditions for construction activities as a condition of the development order. If the stipulated working hours or conditions are violated, a stop work order may be issued until the conditions are mitigated.

(g) All developments must remain in compliance with the terms and conditions of the approved development order even after issuance of a certificate of compliance.

(h) Improvements constructed pursuant to a development order may not be placed into service or

otherwise used until the required certificate of compliance has been issued for the development order.

Sec. 10-8. Design goals.

Development will be approved and a development order will be issued when the development is designed so as to reasonably achieve the following:

(1) ***Preservation of ecological integrity.*** The development shall protect the town's natural, historic, and scenic resources, including air, surface, and subsurface waters, and shall preserve their ecological integrity. No new bridges, or any new causeways which require filling of wetlands or submerged lands, shall be constructed to any undeveloped island.

(2) ***Circulation.*** There must be adequate circulation, ingress, and egress to the development for both pedestrians and motorists. Additionally, the development shall also achieve the following:

a. Ingress and egress areas shall be of sufficient width to provide for servicing of utilities, refuse collection, and access for emergency vehicles.

b. Development shall not cause traffic hazards or congestion which results from excessive exit and entrance points along major streets.

c. In order to evaluate traffic patterns, traffic circulation, and traffic impacts of a development, a traffic impact statement shall be prepared in accordance with the requirements of this chapter.

d. In order to mitigate the traffic impacts of a development, a traffic impact mitigation plan shall be prepared in accordance with the requirements of this chapter.

(3) ***Water and sewage systems.*** All new development must connect to the public potable water and sanitary sewer systems.

(4) ***Drainage and stormwater management.*** The development must be designed in accordance with applicable runoff, retention, and attenuation requirements of SFWMD and this chapter. The development must be designed to avoid flooding or erosion damage to adjacent property and the town drainage system and to avoid the creation of stagnant pools that would encourage mosquito breeding. The development must provide a method of continual maintenance and operation through legal documentation and must ensure proper stormwater management so as to reduce the potential impacts of flooding.

(5) ***Landscaping and buffering.*** Adequate landscaping, including buffers, to preserve compatibility with uses outside the proposed development must be provided.

(6) ***Fire protection.*** The development must include an adequate fire protection system.

(7) ***Density and intensity.*** The development must have a density no higher than that which can be adequately supported by the facilities existing or agreed upon by the developer at the time the development order is issued, and in no case may the density exceed the allowable density and intensity as set forth in the Fort Myers Beach Comprehensive Plan or ch. 34.

(8) ***Historic resources.*** The development must provide for the identification, recognition, protection, or mitigation of the historical and archaeological resources of the town, as provided by the historic preservation element of the Fort Myers Beach Comprehensive Plan and by ch. 22 of this code. Every effort must be made to locate required open space so as to protect archaeological sites.

(9) ***Outdoor lighting.*** All outdoor lighting must be designed and maintained:

a. To curtail and reverse the degradation of the night-time visual environment by minimizing light pollution, glare, and light trespass through the form and use of outdoor lighting;

b. To conserve energy and resources while maintaining night-time safety, utility, security, and productivity; and

c. To protect nesting sea turtles and sea turtle hatchlings by having all artificial lighting comply with the provisions of article II of ch. 14.

Sec. 10-9. Specific requirements.

The remaining articles of this chapter provide more specific requirements for obtaining the development approvals that are required by this code.

Secs. 10-10--10-50. Reserved.

ARTICLE II. DEVELOPMENT ORDERS AND PLATS

DIVISION 1. GENERALLY

Secs. 10-51--10-80. Reserved.

DIVISION 2. DEVELOPMENT ORDERS

Subdivision I. In General

Secs. 10-81--10-100. Reserved.

Subdivision II. Procedures

Sec. 10-101. Applicability of requirements.

(a) ***Development orders.*** All developments, as defined in this chapter, including subdivisions, are required to obtain a development order prior to commencing any land development activities or receiving any development permit, including a building permit, with the exception of the following, which are not subject to review pursuant to this chapter except as noted herein:

(1) Construction of a single family or two-family dwelling unit (and accessory structures as defined in ch. 34) on a single buildable lot (or two lots in the case of a two-family dwelling);
(2) For the installation of propane or LNG tanks incidental to the permitted use on a parcel up to a maximum capacity of 2001 gallons;
(3) Signs that are regulated by ch. 30 of this code;
(4) Any development which has already received a building permit that is still in effect;
(5) Temporary construction trailers;
(6) Beach renourishment projects;
(7) The replacement of existing utility lines; or
(8) Public capital improvements in accordance with article VI of ch. 2.

(b) ***Subdivision plats.*** All subdivisions requiring a development order must also have a subdivision plat meeting the standards of F.S. ch. 177 approved by the town and recorded in the public records prior to the issuance of building permits. However, plats are not required for lot splits granted under the limited review process. Standards and procedures for the approval of plats are contained in division 5 of this article.

(c) ***Installation of improvements.*** All improvements specified on the development order drawings, and in the conditions and documents contained in the development order, must be installed by the developer at the developer's expense, unless otherwise approved within the development order documents.

(d) ***Site-related improvements.*** Developers shall be responsible for the full cost of site-related improvements as defined in this chapter.

Sec. 10-102. Employment of engineers and design consultants.

An engineer shall be employed by the developer to design all required improvements such as streets, drainage structures, drainage systems, bridges, bulkheads, water and sewage facilities, etc. All plans, drawings, reports, and calculations shall be prepared, signed, and sealed by the appropriate licensed professional, such as engineers, architects, landscape architects, land surveyors, and attorneys, registered in the state. Other specialized consultants, such as environmental consultants, archaeologists, etc., may be required to assist in the preparation of the plans, drawings, reports, and other documents required as development order submittals.

Sec. 10-103. Prior zoning approvals for development order submittals.

(a) Any applicant who submits an application for development order approval on a project with planned development zoning will have the submittal reviewed for full compliance with the adopted master concept plan and any conditions of approval concurrently for compliance with this chapter. No development orders shall be issued for the project in question until the plans have been determined to be

in compliance with the terms of the zoning approval.

(b) For developments that require rezoning, the applicant may make application for a development order and the rezoning simultaneously. The development order will be reviewed for compliance with the requirements of this chapter and the requirements of ch. 34 for the proposed zoning of the property. No approval of the development order will be granted until the proposed rezoning is approved and a zoning resolution signed by the mayor.

Sec. 10-104. Deviations and variances.

(a) ***Provisions where administrative deviations are authorized.*** The director is hereby authorized to grant administrative deviations from the technical standards in the following sections in this chapter:

(1) § 10-285 (intersection separations);
(2) § 10-289 (sidewalk widths);
(3) § 10-296, Table 10-2, items (1)–(7) (road specifications);
(4) § 10-296(j) (intersection designs);
(5) § 10-296(k) (culs-de-sac);
(6) § 10-322 (swale sections);
(7) § 10-329(c)(1) (setbacks for water retention/detention excavation from private property);
(8) § 10-385(c) (water mains);
(9) § 10-416(c) (landscaping of parking and vehicle use areas);
(10) § 10-441–470 (mass transit facilities).

(b) ***Criteria for administrative deviations.*** Administrative deviations shall be granted only where the director finds that the following criteria have been met:

(1) That the alternative proposed to the standards contained herein is based on sound engineering practices (not applicable to division 7 of article III of this chapter);
(2) That the alternative is no less consistent with the health, safety, and welfare of abutting landowners and the general public than the standard from which the deviation is being requested;
(3) For division 7 of article III of this chapter, the required facility would unnecessarily duplicate existing facilities; and
(4) The granting of the administrative deviation is not inconsistent with any specific policy directive of the town council, any other ordinance, or any Fort Myers Beach Comprehensive Plan provision.

(c) ***Submittal requirements.*** The submittal requirements for an administrative deviation shall include the following:

(1) A completed application form provided by the director;
(2) Plans, sealed by a registered professional engineer where appropriate, that accurately reflect the applicant's alternative proposal;
(3) A written statement showing how the proposed alternative meets the criteria in subsection (b) above; and
(4) Any other materials and/or calculations requested by the director to aid in the decision.

(d) ***When submittals may be made.*** Requests for administrative deviations may be submitted contemporaneously with the applicant's original development order application, or at any time thereafter, so long as the application has not been withdrawn.

(e) ***Refusals.*** Administrative deviations may not be unreasonably refused.

(f) ***Appeal of director's decision.*** The director's final decision may be appealed in accordance with the procedures in § 34-86. The town council shall grant the appeal only upon a finding that the criteria in subsection (b) above have been met.

(g) ***Variances.*** Requests to vary or deviate from the terms of those sections of this chapter that are not listed in subsection (a) above must be filed in accordance with the procedures set out for variances and deviations in ch. 34, except for those matters where this chapter specifically states that variances may not be granted. Applicants for administrative deviations that have been denied by the director may also apply for variances or deviations in accordance with the procedures and criteria in ch. 34.

(h) ***Pursuant of variances or deviation concurrently with development order.*** The applicant may pursue approval of variances and deviations concurrently with an application for a development order. The development order will be reviewed but cannot be approved until all of the

necessary variances and deviations have also been approved. After a variance or deviation request has been heard and has been approved or denied, the applicant shall proceed with the preparation of all the documents necessary for the approval of the development order.

(i) ***Deviations in planned developments.*** For developments that have received zoning as a planned development, specific deviations from the terms of these regulations shall not be required if such deviations were approved as part of the schedule of deviations attendant to the master concept plan.

Sec. 10-105. Preapplication meeting.

All applicants are encouraged to submit an application for an informal meeting with the director's staff for the purpose of advancing a conceptual plan for development prior to making formal application for approval of a development order. The results of the meeting shall not be binding upon the developer or the town.

Sec. 10-106. Revocation of existing development orders on granting of new development order.

In those cases where an applicant wishes to apply for a development order on property upon which a development order has been granted and is still valid, the applicant must, as a condition of making application for a new development order, agree to the revocation and cancellation of the entire existing development order upon granting of the new development order. This agreement shall be in writing and shall be irrevocable.

Sec. 10-107. Initiation of application; designation of representative.

All legal and equitable owners of the property must jointly authorize the filing of an application for a development order and any subsequent amendments thereto. The applicants shall designate a representative who shall have full power and authority to represent and bind all legal and equitable owners of the property. Legal and equitable owners of the property include but are not limited to the heirs, successors, and assigns of the legal and equitable owners, all mortgagees, purchasers of all or any portion of the property under a sales contract or an agreement for deed, and all trustees. The authority of the duly authorized representative for the applicant shall continue should an amendment to the development plan be sought if all new legal or equitable owners have joined in the application and that authority has not been expressly revoked by any of the legal or equitable owners.

Sec. 10-108. Application procedure.

(a) The general procedure to obtain a development order requires that the applicant employ a registered professional engineer and other development consultants, as may be required, to prepare engineered drawings, plans, reports, calculations, and legal documents that are specified in this chapter. The applicant shall submit a completed application, pay all required application fees and submit all required submittals to the director. The director will review the data submitted by the applicant and will approve or deny the development order request. Review of submittals shall be performed as noted in § 10-109.

(b) The development order must be approved prior to approval of plats and prior to the issuance of a building permit. No estoppel argument or grievance of any sort shall be made by any applicant who submits simultaneously for development orders and building permits and has to incur further expense to revise any documents or drawings submitted.

(c) Developments required to plat shall submit the application for plat review pursuant to the procedures and application requirements for a development order. Application may be made simultaneously for plat review and development order review.

Sec. 10-108.1. Payment of taxes.

No development orders or plats shall be approved for the subject property if ad valorem taxes or assessments against the property are delinquent or if there are outstanding tax certificates issued for the property.

Sec. 10-109. Review procedure; action by director.

(a) The submittal for development order approval shall be made to the director. The director will log

in the submittal transaction and will schedule a time and due date for completion of the submittal review. No review shall take place unless all appropriate filing fees and charges have been paid. After the initial review of the submittal, the director will notify the applicant, in writing, of the results of the review, and the rationale upon which any unfavorable decision was based.

(b) The director will take one of the following actions as a response to a submittal:

(1) Grant approval of the development order;
(2) Deny approval of the development order; or
(3) Grant conditional approval subject to the applicant fulfilling certain specified terms as outlined in the approval letter. The granting of conditional approval shall not be granted as a matter of right, but may be granted as a matter of discretion by the director. Should the applicant not meet the conditions set forth in the conditional approval, the conditional approval shall be automatically rescinded, and all funds expended in reliance on the conditional approval shall be expended at the applicant's own risk. The granting of conditional approval shall be subject to the conditions and time constraints imposed by the director in the conditional approval letter.

(c) When the director denies an application, a list of deficiencies requiring correction will be sent to the applicant with a letter stating that the application has been denied.

Sec. 10-110. Resubmittal of application following denial.

(a) Where the director denies approval of the application for a development order and the submittals pursuant thereto, then the applicant may do either of the following:

(1) Redraft and resubmit the submittals required for approval to the director in accordance with §§ 10-108 and 10-109; or
(2) Appeal the denial of the development order submittal in accordance with the provisions of § 10-112.

(b) Subsequent to notification that the plans have not been approved due to deficiencies, the applicant shall have 180 days to submit a supplement or corrected drawings or plans setting forth those corrections and changes necessary to remedy the deficiency. If the supplement is not submitted in 180 days, the application shall be deemed withdrawn.

(c) Where the applicant is required to redraft and resubmit to pursue approval of an application, the applicant will submit such revised drawings, plans, reports, calculations, etc., as may be deemed necessary by the director to substantiate compliance with this chapter.

Sec. 10-111. Issuance of order; approval letter and stamping of drawings.

When the director grants approval of all development order submittals, the development order shall be issued. The director shall issue a development order approval letter and will stamp the approved development order drawings with an appropriate development order approval stamp.

Sec. 10-112. Appeals.

(a) ***Right of appeal.***

(1) The applicant may file an appeal of any decision of the director in accordance with § 34-86.
(2) An appeal is not a legal substitute for a variance. Any appeal that requests a departure from or waiver of the terms and conditions of this chapter shall not be heard through the appeal process, except as provided in § 10-104(f).

(b) ***Decisions.***

(1) If the decision of the director is upheld, then the applicant may redraft and resubmit all documents which are necessary for the appropriate approval in accordance with §§ 10-109 and 10-110.
(2) If the decision of the director is reversed without modifications, then the applicant may prepare the submittals required for final approval or be issued a development order by the director, as appropriate.
(3) If the decision of the director is modified on appeal, then the applicant may take such remedial steps as are necessary to correct the rejected submittals and resubmit them in accordance with §§ 10-109 and 10-110.

(c) ***Special magistrate.***

(1) The applicant may file a request for relief under F.S. § 70.51 within 30 days from the

conclusion of an administrative appeal, or 4 months from the initiation of an administrative appeal even if that appeal has not concluded.

(2) The request for relief must allege that the decision of the director is unreasonable or unfairly burdens the use of the subject property. The request for relief will be heard by an impartial special magistrate in accordance with § 34-94.

(3) The request for relief under F.S. § 70.51 will not adversely affect the applicant's rights to judicial review. However, a request for judicial review will waive the right to a special magistrate proceeding.

Sec. 10-113. Recording of notice of development order.

Where a development order is issued, then a notice of the development order, in accordance with the forms to be provided by the director, shall be executed, and the director shall record the notice in the official record books of the county.

Sec. 10-114. Contents of development order.

A development order shall contain the following:

(1) Incorporation by reference of all submittal documents required for a development order application; the plat, if a subdivision; and all other documents prepared for approval of the development order;

(2) A list of all town permits which must be obtained;

(3) Any other conditions which the director deems appropriate in accordance with this chapter; and

(4) A signature clause, to be signed by the duly authorized representative, which will bind all owners and run with the land.

Sec. 10-115. Duration of development order.

(a) A development order will be valid for a period of 3 years from the date of issuance for those items specifically approved in the development order, or for the life of the surety or performance bond if the bond is for a period of less than 3 years. A development order for property which is the subject of a duly executed development agreement (see §§ 2-91–2-300) may be authorized for a different period if so prescribed in the development agreement.

(b) The development order is valid for those items specifically approved.

(1) The development order file will become inactive when the certificate of compliance is issued for the project or when the last certificate of compliance is issued for the last phase of a phased project.

(2) For phased projects where tracts of land are designated as future development areas (see § 10-117), the development order for subsequent phases must be approved within 3 years of the development order approval of the last phase approved. If the development order for a subsequent phase is not approved within 3 years of the last phase approved, the applicant must obtain a new development order for the undeveloped portion of the project and pay all applicable fees.

(c) In order for a development order to remain valid and active, significant construction activity must commence within the duration of the development order and the construction of the project to build-out must be actively pursued.

(1) Active pursuit of construction of a project to build-out is defined as continuous construction of the improvements shown and specified in the development order or buildings on the project.

(2) If a project, including a phased project, is under construction when the development order duration period has elapsed, the developer must either obtain a development order extension or continue the construction to build-out without any periods of construction inactivity which exceed 18 months.

(3) For development order projects where there has been a foreclosure action, a deed given in lieu of foreclosure, or title has been transferred pursuant to court ordered sale, and where there is a question of active pursuit of the construction under the development order, the new owner must resume construction of the project within 24 months from the date when the title to the property changes pursuant to the foreclosure, deed in lieu of foreclosure or court sale. Once restarted, construction must continue to

build-out without any periods of construction inactivity which exceed 18 months.

(d) Documents approving the issuance of development orders may contain language stating that the development order's concurrency approval is effective for a shorter period than the remainder of the development order, in accordance with article II of ch. 2. No vested right to concurrency approval will exist solely due to the existence of an otherwise effective development order.

Sec. 10-116. Effect of approval of development order.

If all applicable state and federal permits and approvals have been obtained, the issuance of a development order shall be authorization for the applicant to begin those site development activities specifically approved in the development order. Site development activities shall not occur before all applicable state and federal permits have been obtained.

Sec. 10-117. Phased projects.

(a) ***Authorized.*** Development projects may be split into phases to accommodate the development plans and schedules of the developer. However, development orders for phased projects must still show all required facilities, infrastructure, and buildings, if applicable, on the entire parcel of land that is covered by the development order.

(b) ***General requirements.*** The development order drawings or plans for each phase shall be sufficiently clear to show compliance with this chapter.

Sec. 10-118. Amendments generally.

(a) If an applicant wishes to amend any part of a development for which a development order has been issued, he shall submit, on the forms to be prescribed by the director, an application for an amendment to the development order. The development order amendment application shall be accompanied by revised plans, reports, and other appropriate submittals to allow the director to ensure that the proposed amendment complies with the requirements of this chapter.

(b) Development order amendment applications and submittals will be prepared, reviewed, and processed in accordance with the procedures specified in §§ 10-108, 10-109, and 10-110, as well as other procedural and technical sections of this chapter.

(c) A development order amendment fee, in accordance with the adopted fee schedule, shall be paid by the applicant prior to review of the amendment submittal.

Sec. 10-119. Amendment to correct error or omission.

When, after issuance of a development order and prior to commencement of construction (land clearing), it is determined that the development order should have contained a specific town permit, and the permit was omitted, or that by an error or omission of the applicant's consultant a technical requirement of this chapter is not satisfied, the applicant shall submit an application for a development order amendment as specified in § 10-118 to correct the development order, except that no fees will be paid.

Sec. 10-120. Minor changes.

(a) Minor changes to an approved development order may be requested. Minor changes are those changes which do not substantially affect the technical requirements of this chapter or do not require a review by 3 or more of the following review disciplines: zoning, transportation, drainage, fire, utilities, and landscaping. Changes that exceed the criteria for the scope of a minor change as specified in this subsection shall be processed as a development order amendment in accordance with § 10-118.

(b) If an applicant wishes to make a minor change to a development order, he shall submit an application for a minor change on the forms provided by the director. The minor change application shall be accompanied by revised plans, reports, and other appropriate submittals to allow the director to ensure that the proposed minor change complies with the requirements of this chapter.

(c) A minor change application fee, in accordance with the adopted fee schedule, shall be paid by the

applicant prior to review of the minor change submittal.

(d) Any change which is requested as a result of a violation revealed during final inspection will not be processed as a minor change, but instead will be considered and reviewed as an amendment and shall be subject to the provisions of § 10-118.

(e) Applications for minor changes will be prepared, reviewed, and processed in accordance with the procedures specified in §§ 10-108, 10-109, and 10-110, as well as other procedural and technical sections of this chapter.

(f) Any number of minor changes will be allowed; however, only two separate submittals or applications will be allowed for either single or multiple minor changes on small projects and only 4 separate submittals will be allowed for either single or multiple minor changes on large projects. Minor changes required due to conflicts in the requirements of other governmental agencies or utility companies will not be counted towards the maximum of two separate minor change submittals.

Sec. 10-121. Transfer.

Development orders run with the land and are transferable to subsequent owners of property that is covered by a development order. In order for a subsequent owner of property that is covered by a development order to ensure that the development order file is current, the new owner of the property must submit the following documents:

(1) A recorded deed or current title opinion to prove ownership of the property.
(2) A list of all owners of the property.
(3) A statement signed by the applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the issuance of a development order in accordance with this code. The signed statement also constitutes an acknowledgment that the property will not be transferred, conveyed, sold, or subdivided unencumbered by the covenants and restrictions imposed as part of the development order.

Sec. 10-122. Violation of development order.

(a) Where construction is commenced for improvements not authorized by a development order, the applicant shall be issued a stop work order until an application to amend or correct the development order has been submitted and approved.

(b) An application to amend or correct a development order after construction has commenced in violation of the original development order shall be charged an application fee equal to 4 times the original development order application base fee.

(c) Submittal of the application and payment of the application fee does not protect the applicant from the remedies described in § 10-6. Any of these forms of relief can be sought or maintained by the town until the problem is abated.

(d) Failure to maintain a development in compliance with a development order issued and approved under a certificate of compliance or certificate of occupancy constitutes a violation of this chapter and § 10-183.

Sec. 10-123. Extensions.

(a) The town council may grant two-year extensions of time for a development order provided:

(1) The applicant requests the extension, in writing, prior to the expiration date of the development order;
(2) The applicant's request identifies the reasons for the extension;
(3) All surety or performance bonds are extended by the developer;
(4) The development order is in compliance with the Fort Myers Beach Comprehensive Plan and this code; and
(5) The development order does not conflict with any incipient policies of the town council.

(b) The granting of an extension is a matter of discretion and not of right.

Sec. 10-124. Coordination of review.

The review of development orders is a multidiscipline review process involving zoning,

transportation, stormwater management, utilities, environmental issues, etc. The director may obtain assistance and advice, as appropriate, from other town or county departments to ensure compliance with this chapter.

Secs. 10-125--10-150. Reserved.

Subdivision III. Submittals

Sec. 10-151. Generally.

(a) Except as may be specifically waived by the director in accordance with § 10-152, the documents and graphics required to apply for a development order shall be as specified in this subdivision.

(b) All drawings shall be drawn on 24-inch by 36-inch sheets at an appropriate scale. If more than one sheet is required, appropriate match lines shall be indicated. The director may allow electronic submittals of work-in-progress drawings. These submittals must be on 3.5-inch floppy disks and include at least one 24- by 36-inch hard copy print. Final drawings must be submitted as 24- by 36-inch hard copy prints in order to be stamped "approved."

(c) All drawings shall be oriented so that north is towards the top or left of the drawing. A title block shall appear in the lower righthand corner or along the right side of the sheet. Each sheet shall be signed and, where appropriate, sealed by the consultant preparing the drawing.

(d) The following information shall be provided on all submitted drawings other than plats:

(1) The name of the proposed development and the date the drawing was completed. If a revision, the revision dates shall be included.
(2) The name, address, and telephone number of the person preparing the drawings.
(3) The name and address of the developer.
(4) North arrow and scale.

Sec. 10-152. Requirement waiver.

The director may waive the requirement for any submittal item which he deems unnecessary for an adequate review of the proposed development. Such a waiver of the required number or nature of submittals shall not constitute a change in the substantive standards or requirements of this chapter.

Sec. 10-153. Application form and contents.

The application form for development order approval shall be obtained from the director. The following information, at a minimum, shall be included in any application form for a development order:

(1) ***Sworn statement of authorization.*** A statement signed by the applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the issuance of a development order in accordance with this code. The signed statement also constitutes an acknowledgment that the property will not be transferred, conveyed, sold, or subdivided unencumbered by the covenants and restrictions imposed as part of the development order.
(2) ***Owner, applicant, and developer information.***
   a. The name of the proposed development.
   b. The name, address, and telephone number of the applicant.
   c. The name, address, and telephone number of the developer.
   d. The name of the property owner.
   e. The name of all persons or entities having an ownership interest in the property, including the names of all stockholders and beneficiaries of trusts. Disclosure with respect to a beneficial ownership interest in any entity registered with the U.S. Securities and Exchange Commission or registered pursuant to F.S. ch. 517, whose interest is for sale to the general public, is exempt from the provision of this subsection.
   f. A listing of the professional consultants employed in preparing the application or submitted documents. The names, addresses, and telephone numbers shall be provided for consultants such as but not limited to architects, engineers, attorneys, landscape architects, planners, and surveyors.

(3) ***Property information.***
   a. A legal description for the property and STRAP number.
   b. The date the property was acquired.
   c. The property dimensions and area.

(4) ***General development information.***
   a. The present zoning classification of the property.
   b. Required rezoning, variance, and special exception information.
   c. Existing development order applications and approvals on the property.
   d. Federal, state, and local permits and stipulations affecting the development order applications.

(5) ***Proposed development.***
   a. Type of proposed development.
   b. Approximate acreage and percentage of total land area for each proposed use to be developed.
   c. Acreage and percentage of total area of ground cover of structures and other impervious surfaces, and open space.
   d. Proposed number and height of all structures.
   e. Number of dwelling units and lots if a subdivision.
   f. Types and uses of proposed structures.
   g. Parking and loading area information.
   h. Proposed recreational facilities information.
   i. Project phasing information.

(6) ***Permits required for development.***
   a. State and federal permit information.
   b. Local permit information.

Sec. 10-154. Additional required submittals.

The following additional items shall be submitted with an application for development order approval:

(1) ***Legal description.*** A legal description for the property shall be submitted. If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. The director has the right to reject any legal description which is not sufficiently detailed to locate the property on official maps.

(2) ***Title assurance.*** Title assurance in the form of either a title certification by an attorney or a title insurance policy shall be required.

(3) ***Boundary survey.*** A boundary survey prepared by a surveyor, meeting the minimum technical standards for land surveying in the state, as set out in F.A.C. ch. 61 G 17-6, shall be submitted. For projects of ten acres or more, the survey must be tied to the state plane coordinate system for the Florida West Zone (North American Datum of 1983/1990 Adjustment). Boundaries must be clearly marked with a heavy line and must include the entire area to be developed. The Federal Emergency Management Agency flood zone and required finished floor elevations shall be shown.

(4) ***Plat.*** If the development is a subdivision, a plat meeting the requirements of F.S. ch. 177 shall be submitted.

(5) ***Zoning resolution.*** A copy of the most recent zoning resolution for the subject property, and any other pertinent zoning resolutions, special exceptions, or variance documents, shall be submitted.

(6) ***Existing conditions and improvements drawing.*** An existing conditions and improvements drawing showing at a minimum the following:
   a. **Area location map.** An area location map showing the location of the property to be developed in relation to major streets.
   b. **Coastal construction control lines.** 1978 and current (1991) coastal construction control lines, if these lines cross the subject property (see § 6-333(a).
   c. **Street network.** The location and name of abutting streets together with the number of lanes, the widths of rights-of-way and easements, and the location and purpose of abutting utility easements. The established centerline of streets on or abutting the property shall be shown.
   d. **Topography.** Existing elevations based on the National Geodetic Vertical Datum of 1929. Sufficient spot elevations based on the National Geodetic Vertical Datum of 1929 shall be shown to indicate the slope of the land and any rises, depressions, ditches, etc., that occur, but in no case shall spot elevations be shown

at a spacing greater than 200 feet. Spot elevations shall be shown beyond the development boundary extending a minimum of 25 feet. The director may direct a closer grid pattern or elevations more than 25 feet beyond the development boundary to provide sufficient satisfactory information.

e. **Wetlands.** Identification of wetlands as defined in ch. 34. The applicant may be required to flag these areas for site inspection.

f. **Existing vegetation.** Identification of existing vegetation. The map shall include the edges of all areas of mangrove, coastal scrub (beach/dune), and tropical hardwoods, and indicate all protected trees.

g. **Existing buildings.** The location of all existing buildings and structures on the property. If buildings or structures are to be moved or razed, this should be noted.

h. **Other improvements.** The location and size of all wells, bikeways, pedestrian ways, curbs, gutters, storm drains, and manholes on or abutting the property.

i. **Zoning.** The zoning classifications for the subject property, as well as the zoning and actual use of all abutting properties.

j. **Historic/archaeological sites.** The nature and location of any known or recorded historical or archaeological sites as listed on the Florida Master Site File, and the location of any part of the property which is located within level 1 or level 2 zones of archaeological sensitivity pursuant to ch. 22. A description of proposed improvements that may impact archaeological resources shall also be provided.

k. **Public transit.** The location of existing and proposed public transit service areas, and bus routes and stops, including passenger amenities, e.g., shelters, lighting, benches, bikeways, pedestrian ways, passenger parking, bicycle racks, etc.

l. **Hydrology.** A diagram depicting the existing surface hydrology of the property.

(7) ***Proposed development plan drawings.*** Proposed development plan drawings showing at a minimum the following:

a. **Lot lines.** If the development is a subdivision, all lot lines and lot numbers.

b. **Phasing plan.** For phased development orders, the applicant must submit a phasing plan with the stages numbered in sequence. The phasing plan must show how each phase fits into the master plan for the continuance of streets, bikeways, pedestrian ways, drainage, stormwater management, potable water, fire protection, sewage collection, landscaping, and buffers. Specific requirements for phased projects are specified in § 10-117.

c. **Proposed buildings or proposed structures.** The building envelope, that is, the perimeter of the area within which the building will be built, the finished floor elevation and height of all buildings and structures, the maximum number of dwelling units or gross floor area, and no less than the minimum number of required parking spaces, including the number of spaces for the handicapped, shall be shown.

d. **Open space and recreation**. All proposed open space and recreation areas and facilities shall be shown and identified as either public or private. If common facilities, including but not limited to recreation areas or facilities and common open space, are proposed, a statement shall be included explaining how the area or facilities shall be permanently operated and maintained, and identifying who will be responsible for such maintenance. A list of the facilities to be constructed within each park or recreational area shall be provided or shown on the drawings.

e. **Access.** Proposed vehicular ingress and egress for the development.

f. **Streets.** Proposed streets within the development.

g. **Sidewalks.** Proposed location of bikeways and pedestrian ways, with ingress to and egress from the development, as well as to or from common open space areas.

h. **Transit.** Where applicable, the proposed location and type of public transit amenities to be provided.

i. **Parking and service areas.** All off-street parking areas and all landscaped areas to be reserved for future parking spaces pursuant to § 34-2017(d), and all service areas for delivery of goods or services, shall be shown for all developments that are not subdivisions.

j. **Utilities.** A statement indicating the proposed method intended to provide water, sewer, electricity, telephone, refuse collection, and street lighting, including but not limited to a plan showing the location and size of all water mains and services, fire hydrants, sewer mains and services, and pumping stations, together with plan and profile drawings showing the depth of utility lines and points where utility lines cross one another or cross storm drain or water management facilities. The location of services shall be shown.

k. **Drainage and stormwater management plan.** A drawing showing the location of all curbs and gutters, inlets, culverts, swales, ditches, water control structures, water retention or detention areas, and other drainage or water management structures or facilities shall be submitted. Sufficient elevations shall be shown to adequately show the direction of flow of stormwater runoff from all portions of the site. A copy of all drawings and calculations submitted to SFWMD shall also be submitted.

l. **Landscaping and buffering**. A landscaping plan shall be submitted showing not less than the required landscaping, open space, and perimeter buffer areas, and including:

1. Title of project, including project owner's and preparer's name, and drawn at the same scale as the development order plans, with dimensions and north arrow.
2. A tree location map or aerial photographic overlay which depicts the precise location of all protected trees (see § 14-380), the proposed preservation or relocation of existing trees, and the planting of any new trees required by this chapter.
3. All proposed landscaping, open space, and buffering, with code-required landscaping highlighted.
4. Vehicle use areas (parking, aisles, driveways).
5. Roadways and access points.
6. Overhead and underground utilities.
7. All easements.
8. Construction vegetation protection barricades.
9. Permanent vegetation protection techniques.
10. Details for mulch and tree/palm staking.
11. Reference chart that include graphic plant symbols; botanical and common names; plant quantities, height, and spread; and plant spacing and native status. All areas of dune vegetation, as defined in § 14-1, must be shown.
12. The narrative and calculations to demonstrate that the proposals will comply with this code.

m. **Irrigation.** An irrigation plan may be a separate drawing or may be combined with the landscaping and buffering plan; or it may be omitted if an irrigation system is not required (see § 10-417). A conceptual irrigation plan must indicate:

1. Type of automated irrigation system proposed.
2. All landscaped areas, including parking lot islands, will be adequately sleeved for irrigation.
3. A moisture (rain) sensor will be included in the irrigation system and located on the site so that it will receive all rainfall.
4. Irrigation system will be designed to eliminate the application of water to impervious areas, including roads, drives, and other vehicle use areas.
5. Irrigation system will be designed to avoid impacts on indigenous plant communities that will be retained on the development site.

n. **Historical and archaeological resources.** The plan shall show the outline of historic buildings and approximate extent of archaeological

sites. Where this information is not available from published sources, a professionally conducted archaeological survey may be required.

o. **Excavations.** Where applicable, the location of all excavations shall be shown, including the outline or boundaries of the excavation, both the outline of the top of the bank and the outline when the lake is at its maintained elevations, the depth of all excavations, the controlled water depth, and the slopes of all excavations.

p. **Wetlands.** A description of impacts on wetlands and mitigation measures.

(8) ***Exterior lighting plan, photometrics, and calculations.*** An exterior lighting plan and photometric information must be submitted in accordance with the requirements of §§ 10-8(9) and 34-1831–1833.

(9) ***Aerial photograph.*** A recent aerial photograph of the property and all properties within 660 feet of the perimeter of the property, with a scale of one inch equals 200 or 300 feet, shall be submitted.

(10) ***Traffic impact statement.*** A traffic impact statement (TIS) shall be submitted, which shall survey current and anticipated traffic conditions and public transportation in order to identify potential traffic problems posed by the proposed development. Adverse traffic impacts created by the development, both on-site and off-site, shall be mitigated by the applicant as specified in the traffic impact mitigation plan and development order. Criteria for traffic impact statements are specified in article III, division 2, of this chapter.

(11) ***Traffic impact mitigation plan.*** When required by the director, a traffic impact mitigation plan shall be submitted, which shall be based on the approved traffic impact statement and shall identify in detail those on- and off-site road and intersection improvements necessary to mitigate the proposed development's adverse impacts by maintaining or restoring adopted levels of service on the public roads providing immediate access to the site, including any major to which the adjacent street is tributary. Criteria for traffic impact mitigation plans are specified in article III, division 2, of this chapter.

(12) ***Hazardous materials emergency plan.*** Any applicant for a new marina or an expansion to an existing marina shall be required to submit a hazardous materials emergency plan, which shall be subject to the approval of the county division of emergency management and the fire district. The plan shall also provide for annual monitoring for capacity and effectiveness of implementation. At the minimum, the plan shall comply with the spill prevention control and countermeasure plan (SPCC) as called for in the federal oil pollution prevention regulations, 40 CFR 112, as amended.

(13) ***Protected species survey.*** A species survey shall be submitted, if applicable, as required by article III, division 8, of this chapter.

(14) ***Protected species habitat management plan.*** A management plan for protected species habitat shall be submitted, if applicable, as required by article III, division 8, of this chapter.

(15) ***Certificate to dig; historic preservation forms and reports.*** When applicable, an archaeological/historic resources certificate to dig shall be submitted to the director. Florida Master Site File forms for historical or archaeological resources, facade, or other historic or scenic easements related to the subject property or reports prepared by a professional archaeologist as may be required by ch. 22 shall be submitted.

(16) ***Historical/archaeological impact assessment.*** An impact assessment for historical or archaeological resources describing the following treatments: demolition, relocation, reconstruction, rehabilitation, adaptive use, excavation, filling, digging, or no impact, shall be submitted.

(17) ***Exotic vegetation removal plan.*** An exotic vegetation removal plan, as specified in article III, division 6, of this chapter, shall be submitted to the director.

(18) ***Calculations and other pertinent materials.*** The director may also require submission of calculations in support of all proposed drawings, plans, and specifications. Calculations, data, and reports to substantiate engineering designs, soil condition, flood hazards, compensation of floodplain storage (see § 10-253), wet

season water table, etc., may be required. Prior to the release of the drawings approved by the director, construction of the development shall be limited to clearing and grubbing for construction of accessways to and within the site and to pollution control facilities required during the construction phase. If such work is done prior to approval of construction plans, a tree removal permit will be required.

(19) ***Emergency preparedness plan.*** Prior to final approval of a development order for a nursing home, assisted living facility (ALF) or developmentally disabled housing project, an emergency preparedness plan acceptable to the director shall be submitted. To be approved, such plan must comply with the applicable criteria in F.A.C. chs. 59A-3, 59A-4, and 59A-5, as they may be amended.

(20) ***State permits.*** Prior to final approval of a development order, copies of permits issued by SFWMD or DEP shall be submitted. Copies of all other necessary state land development permits shall be submitted prior to the commencement of any construction work on the site.

(21) ***Operation and maintenance covenants.*** Where applicable, a copy of the covenants used for the maintenance and operation of the improvements required by this chapter including but not limited to private streets and adjacent drainage, drainage and storm water management systems, utilities, public water and sewage systems, on-site bikeways, on-site pedestrian ways, open space, parks, recreation areas, and buffers.

(22) ***Articles of incorporation or other legal documents for assignment of maintenance.*** The developer must submit a copy of the legal documents creating the legal mechanism to ensure that the drainage system, on-site bikeways, on-site pedestrian ways, roadways, and rights-of-way are continuously maintained.

(23) ***Opinion of probable construction costs.*** The developer's consultant must prepare and submit the estimated cost of installing all streets, drainage systems, water management systems, potable water treatment and distribution systems, sewage collection and treatment systems, bikeways, pedestrian ways, park and recreation improvements, landscaping, and buffers as follows:

a. Subdivisions: on-site and off-site improvements.
b. All other developments: off-site improvements.

The opinion of probable cost must include an estimated date of completion for the work.

(24) ***Assurance of completion of improvements.*** Assurance of completion of the development improvements as specified in subsections a. and b. is required for all off-site improvements prior to commencing any off-site or on-site development. Assurance of completion of the development improvements for on-site subdivision improvements will be required prior to the acceptance of the subdivision plat. Those on-site subdivision improvements which have been constructed, inspected, and approved by the director may be excluded from the requirements of subsections a. and b.

a. **Surety or cash performance bond.** Security in the form of a surety or cash performance bond must be posted and made payable to the town in an amount equal to 110 percent of the full cost of installing the required improvements approved by the town. If the proposed improvement will not be constructed within one year of issuance of the final development order, the amount of the surety or cash performance bond must be increased by 10 percent compounded for each year of the life of the surety or bond. Alternatively, the surety or cash performance bond may be renewed annually at 110 percent of the cost of completing the remaining required improvements if approved by the director. Prior to acceptance, bonds must be reviewed and approved by the town attorney.
b. **Other types of security.** The board may accept letters of credit or escrow account agreements or other forms of security provided that the reasons for not obtaining the bond are stated and the town attorney approves the document.

Secs. 10-155--10-170. Reserved.

DIVISION 3.
LIMITED REVIEW PROCESS

Sec. 10-171. Generally.

Developments meeting the criteria in §§ 10-173 and 10-174 shall be entitled to receive a development order in accordance with the procedures in this division. For developments meeting the criteria in this division, no site improvement, tree clearing, or building permits shall be issued prior to approval of the development order.

Sec. 10-172. Legal effect of approval.

Approval of a development order for a development described in this division may require additional permits before development may commence. All applications shall be reviewed by the director for compliance with the Fort Myers Beach Comprehensive Plan, the remainder of this code, other applicable regulations, and any special conditions imposed on a prior zoning approval.

Sec. 10-173. General requirements for limited review process.

Development orders being processed in accordance with the procedures in this division shall be reviewed for compliance with the following general requirements:

(1) The development shall comply with the general and specific requirements of §§ 10-7 and 10-8;
(2) The development shall have no significant adverse effect upon surrounding land uses;
(3) The development shall have no significant adverse effect upon public facilities in the area;
(4) The development shall not adversely effect the environmental quality of the area; and
(5) The development proposal shall be consistent with the Fort Myers Beach Comprehensive Plan.

The director is authorized to impose conditions consistent with the provisions of this chapter in order to mitigate adverse impacts generated by the proposed development.

Sec. 10-174. Types of development entitled to limited review.

The following types of development may be processed in accordance with this division:

(1) A cumulative addition or enlargement of an existing impervious area, provided that the addition or enlargement does not increase the total impervious cover area by more than 2,500 square feet and there is no increase in the rate of runoff from the project site.
(2) Any out-of-door type recreational facilities, such as swimming pools, tennis courts, tot lots, and other similar facilities, provided the total cumulative additional impervious area does not exceed 8,000 square feet.
(3) Any one-time subdivision of land into 4 or less lots where zoning district regulations permit such subdivision; provided, however, that:
    a. Each lot must meet or exceed all requirements of the zoning district in which located;
    b. Each lot abuts and has access to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by this chapter;
    c. No significant alteration of existing utility installations is involved;
    d. No change in drainage will occur which adversely affects the surrounding properties; and
    e. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter is required.
(4) *Reserved.*
(5) Any improvements for public water access purposes in town-owned or town-maintained rights-of-way.
(6) Any development for fenced or screened outdoor storage as defined in ch. 34, provided that the yard consists solely of a stabilized grassed surface, a surface water management system, buffers, and fencing; and provided further that site access complies with the provisions of this chapter and ch. 34.
(7) The installation of new utility lines in existing right-of-ways or easements.
(8) Any other improvement to land determined by the director to have insignificant impacts

on public facilities in accordance with applicable standards of measurement in this chapter (vehicular trips, amount of impervious surface, gallons per day, etc.).

Sec. 10-175. Required submittals.

The following submittals are required to apply for a development order in accordance with this division:

(1) A completed application, which shall be made on the application forms provided by the director.
(2) A plan, which shall depict the site and location of all buildings or structures on it.
(3) An area location map.
(4) An aerial photograph (most current available from the county) at a scale of one inch equals 200 or 300 feet.
(5) A written description of the proposal and the reasons why it should be approved.
(6) A copy of any building permit and approved site plan, if applicable.
(7) Any additional necessary or appropriate items which the director may require. Additional data may include copies of deeds, sealed surveys, calculations, SFWMD permits, and other state, federal, or local permits.

Sec. 10-176. Appeals.

If the director denies an application for a development order processed pursuant to this division, the applicant may file an appeal of the director's written decision in accordance with the procedures set forth in § 34-86 for appeals of administrative decisions.

Secs. 10-177--10-180. Reserved.

DIVISION 4. INSPECTIONS AND CERTIFICATE OF COMPLIANCE

Sec. 10-181. Inspection of improvements generally.

A professional engineer registered in the state shall inspect and certify the construction of all required improvements such as streets, drainage structures, drainage systems, bridges, bulkheads, water and sewer facilities, landscaping and buffers, and all other improvements, for substantial compliance with the development order drawings and plans.

Sec. 10-182. Inspection of work during construction.

(a) ***Periodic inspection required; correction of deficiencies.*** The director or his designated agent shall periodically inspect all construction of streets and drainage improvements, including those improvements which are not to be dedicated to the public but are subject to this chapter. The director will immediately call to the attention of the developer, or the developer's engineer, any nonconforming work or deficiencies in the work. Correction of deficiencies in the work is the responsibility of the developer. It is the responsibility of the developer to notify the director 24 hours before a phase of the work is ready for inspection to schedule the inspection. Inspection reports that document the results of the inspection shall be prepared by the town inspector.

(b) ***Specific inspections.***

(1) Inspections of the following phases of work are required:
    a. Drainage pipe after pipe joints are cemented or sealed.
    b. Headwall footings.
    c. Roadway subgrade.
    d. Roadway base.
    e. Asphalt prime coat and all surface courses.
    f. Final site inspection.
(2) The thickness of the roadway base shall be measured under the direction of the town inspector at intervals of not more than 200 lineal feet in holes through the base of not less than 3 inches in diameter. Where

compacted base is deficient by more than one-half inch, the contractor shall correct such areas by scarifying and adding material for a distance of 100 feet in each direction from the edge of the deficient area, and the affected area shall then be brought to the required state of compaction and to the required thickness and cross section.

(3) Seeding and mulching or sodding over all unpaved areas within rights-of-way or roadways will be required at the time of final inspection.

(4) Inspection requirements for water and sewer utility systems are specified in § 10-357.

(c) ***Testing of roadway subgrade, base, and shoulders.*** The developer shall have the roadway subgrade, base, and shoulders tested for limerock bearing ratio and compaction by a certified testing laboratory. The location and quantity of tests shall be determined by the director. There shall be a minimum of one test per 1,000 feet, or two per project. Prior to acceptance by the town, a copy of the test results shall be furnished to the director.

Sec. 10-183. Final inspection and certificate of compliance.

(a) Upon completion of all development required under the approved development order, or phase thereof, an inspection shall be performed by the developer's engineer or his designated representative. Upon finding the development to be completed and in substantial compliance with the approved development order documents, the engineer shall submit a signed and sealed letter of substantial compliance to the director along with a final inspection request. No final inspection will be performed by the town until the letter of substantial compliance has been accepted. The letter of substantial compliance may include a submittal for a minor change with highlighted plans showing minor changes which do not substantially affect the technical requirements of this chapter as described in § 10-120. Letters of substantial compliance shall be in a form approved by the director or town attorney.

(b) Substantial compliance means that the development, as determined by an on-site inspection by a professional engineer or his designated representative, is completed to all the specifications of the approved development order plans and that any deviation between the approved development order plans and actual as-built construction is so inconsequential that, on the basis of accepted engineering practices, it is not significant enough to be shown on the development site plans.

(c) Upon acceptance of the letter of substantial compliance and a request for final inspection, the director or his designated representative shall perform the final inspection. If the final inspection reveals that the development or phase thereof is in substantial compliance with the approved development order, a certificate of compliance will be issued. A certificate of compliance is required prior to the issuance of a certificate of occupancy from the building official. If the final inspection reveals that the development or phase thereof is not in substantial compliance with the approved development order, a list of all deviations shall be forwarded to the engineer. All deviations must be corrected per the amendment and minor change procedure and a new letter of substantial compliance submitted and accepted prior to a reinspection by the director. Applications for amendments, minor changes, inspections, and reinspections shall be charged a fee in accordance with the adopted fee schedule.

(d) If more than one building is covered by the development order, a certificate of compliance for streets, utilities, parking areas, and drainage serving each building shall be required prior to receiving a certificate of occupancy from the building official. If a final inspection is requested for only a portion of a development, that portion must be an approved phase of the development in accordance with the development order plans.

(e) A development project must remain in compliance with the development order, including all conditions, after a letter of substantial compliance, certificate of compliance, or certificate of occupancy has been issued. This requirement applies to any property covered by the development order, whether or not it continues to be owned by the original developer. For purposes of determining compliance, the terms of the development order as issued, or subsequently amended in accordance with this chapter, will control. The standards applicable to review for compliance purposes will be based upon the regulations in effect at the time the development order, or any applicable amendment, was issued.

(f) Improvements constructed pursuant to a development order may not be placed into service or otherwise utilized until the required certificate of compliance has been issued for the development order.

Secs. 10-184--10-210. Reserved.

DIVISION 5. PLATS AND VACATIONS

Subdivision I. Plats

Sec. 10-211. Required.

All subdivisions as defined in this chapter are required to have a plat of the parcel of land containing the subdivision, showing all of the information required by F.S. ch. 177 pt. I, by this chapter, and by any adopted administrative code, and recorded in the official records of the county, prior to the approval of any building permits. Plats are not required for lot splits granted under the limited review process.

Sec. 10-212. Preparation and submission.

Plats must be prepared in compliance with F.S. ch. 177, and must contain all of the elements specified there. Review copies of the plat must be submitted with the application for development order approval. The initial plat submittal must include a boundary survey of the lands to be platted, in accordance with F.S. § 177.041.

Sec. 10-213. Technical requirements.

Technical requirements for plats shall be the same as required by Lee County's administrative code AC-13-19 at the time the plat is approved. References in AC-13-19 to the county's land development code and to county commissioners and other county officials shall be interpreted to refer to the town's land development code and town officials, except for references to the county clerk.

Sec. 10-214. Contents.

Plats must depict the entire parcel of land that is being subdivided.

Sec. 10-215. Waiver of requirements.

Subdivisions approved in accordance with the limited review process in §§ 10-171 through 10-176 are not subject to the requirements of this division.

Sec. 10-216. Monuments.

(a) ***Permanent reference monuments.***

(1) Permanent reference monuments (PRM's) must be placed as required by F.S. ch. 177, as amended, and approved by a licensed, registered state professional land surveyor, on the boundary of all developments.

(2) Monuments must be set in the ground so that the top is flush or no more than one-half foot below the existing ground. Subsurface PRM's must be exposed for inspection when a plat is submitted for review. If development of the subdivision occurs after a plat is reviewed, the PRM's must be raised or lowered to be flush or no more than one-half foot below the finished ground. Subsurface PRM's must be exposed for inspection at the time of final inspection of the development.

(b) ***Permanent control points.*** Permanent control points (PCP's) must be installed in accordance with F.S. ch. 177. When a plat is recorded prior to construction of the subdivision improvements, the PCP's must be set following completion of construction. The surveyor must certify that the PCP's have been set and must record the certification in the official record books of the county.

(c) ***Monuments*.** Monuments must be installed in accordance with F.S. § 177.091(9).

Sec. 10-217. Lot recombinations.

The director may permit the combination or recombination of up to 3 lots of record provided the resulting lots comply with ch. 34, the Fort Myers Beach Comprehensive Plan, and all other applicable provisions of this chapter.

(1) *Application.* The application for a lot recombination must be made in writing on

the form provided by the director and must include:

a. A copy of the plat book and page, if applicable;
b. Copies of the most recent deeds for all of the affected lots;
c. Copies of the deeds establishing that the lots are lots of record, if the lots are unplatted;
d. A statement, signed by the applicant under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested;
e. An area location map;
f. A survey sketch showing the existing and proposed lot lines and the existing and proposed legal descriptions of the affected lots; and
g. A written explanation of the reasons for the request.

(2) *Relocation of easements.* All easements that are affected by a proposed lot recombination must be vacated and relocated, if applicable, in accordance with the Florida Statutes.

(3) *Appeals.* A denial of a lot recombination request is an administrative decision which may be appealed in accordance with the procedures set forth in § 34-86.

(4) *Combinations.* The combination of two or more lots of records into one lot is not a "division" and is not subject to the approval process described in this section; provided, however, that any easements that are affected by such combinations shall be vacated and relocated, if applicable, in accordance with the Florida Statutes.

Subdivision II. Vacation of Town Interest in Real Property

Sec. 10-218. Purpose and intent.

It is the purpose and intent of this subdivision to establish procedures for the town to follow in considering the vacating of public interests in real property. The procedures established by this subdivision are intended to ensure that the vacation of town-owned public interests in real property are legally effective, according to the law of Florida, and that the property rights of private landowners and public entities are protected.

Sec. 10-219. Applications.

All applications must comply with the requirements below.

(a) An application to vacate town-owned public interests in real property must be submitted to the town department of community development with a duplicate copy submitted to the department of public works, on forms provided by the town.

(b) The application must be notarized and must include the following:

(1) Title certificate or attorney's title opinion acceptable to the town indicating that the applicant owns fee simple title to the tract or parcel of real property to which the vacation of the town-owned public interest in real property will inure as well as indicating what liens or assessments currently exist on the property; and
(2) A copy of the most recent tax bill applicable to the property in question as well as proof of payment in full of all current and former tax bills; and
(3) A legal description of the area to be vacated and an accompanying survey indicating the location of all existing improvements including, but not limited to, drainage, utilities, surface water management facilities, streets, buildings, and other physical features within 100 feet of the real property that is the subject of the application request. This drawing must also show the relationship of the subject property to other real property in the surrounding area and the most direct route to the nearest arterial street and must be signed and sealed; and
(4) A copy of the plat indicating the area thereof subject to the request, if applicable; and
(5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and
(6) The original signatures of all persons holding any private legal interest; and
(7) A printed list of all current property owners, STRAP numbers, and mailing addresses within a 500-foot radius of the subject

property, including 2 sets of mailing labels for the real property owners on this list; and

(8) An affidavit of intent stating facts that establish that the vacation or other disposition of the town-owned public interest in real property:
   a. Is not for the purpose of unlawfully obtaining public property for private purposes;
   b. Will not adversely affect the ownership rights or convenient access of persons owning other real property; and
   c. Will not adversely affect future infrastructure and is not in conflict with town, county, state, federal, or other governmental entities' plans regarding transportation, surface water management, utility, drainage, or other public purposes.

(9) Signed letters of approval or no objection from:
   a. The town department of public works
   b. Florida Power and Light
   c. The local cable television company serving the town
   d. The local telephone company serving the town
   e. The local liquid propane gas company serving the town
   f. Lee County or other provider of sanitary sewer services
   g. Lee County Sheriff s Office
   h. Fort Myers Beach Fire Control District
   i. Any other provider of private or public utilities whose facilities or infrastructure may be affected by the action requested, as determined by the director following review of an otherwise complete application.

   If the required reviewing entity determines that the vacation may not serve the best interest of the public, the applicant may offer an alternative or replacement easement. However, the reviewing entity is under no obligation to accept the offered alternative. If an application to vacate is premised on the grant of an alternative or replacement easement, town council will not take action on the application until the instrument necessary to grant the alternative or replacement easement has been accepted in form and content by the town, properly executed by the granting or conveying entity, and delivered to the town to be held in trust pending the town council's consideration of the requested vacation.

(10) Payment of the applicable application fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(11) Subordination agreements with all holders of liens against the real property subject to the request.

(12) Disclosure of county requirement of vacation or statement by the Lee County director of community development or designee that no county vacation is required.

Sec. 10-220. Procedure.

(a) After receipt of a complete application for vacation of town-owned public interests in real property, the director of community development will prepare a report stating both the current and potential town uses, both short-term and long-term, of the town-owned public interests in real property subject to the vacation request. This report will make specific reference to the adopted capital improvements program (CIP) and to the goals, objectives, and polices of the Town of Fort Myers Beach Comprehensive Plan, and will evaluate how both retention and disposition of the subject town-owned public interest in real property does or does not further the adopted goals, objectives, and policies of the comprehensive plan and the adopted CIP.

(b) The complete report will be provided to the town public works director, town finance director, and any other applicable town staff for review and comment. All written staff comments will be included in the packet provided to the local planning agency and the town council.

(c) The packet, with staff comments, will be referred to the local planning agency for public hearing and recommendations. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for each of 2 weeks prior to the public hearing. The first legal notice

must appear at least 15 days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the local planning agency at the time of the public hearing.

Following the public hearing before the local planning agency, the complete report and staff recommendations and the local planning agency minutes and resolution with recommendations will be reviewed by the town council in a public meeting. If, after reviewing the report and the local planning agency minutes and recommendations, the town council decides to pursue possible vacation of the town-owned public interest in real property, the town council will direct the town manager to schedule a properly noticed public hearing on the possible vacation. The town will publish the notice of public hearing on the application to vacate in a newspaper of general circulation at least once a week for 2 weeks prior to the public hearing. The first legal notice must appear at least 15 days prior to the date of the public hearing. An affidavit of public hearing confirming legal notice of the public hearing must be presented to the town council at the time of public hearing. At this hearing, the town council will determine:

(1) Whether the vacation of the subject real property for other use will adversely affect the future land use map category, as set forth in the comprehensive plan, or adversely affect the zoning district, as set forth in this code, and whether it is otherwise consistent with the requirements of state and federal law; and
(2) The original intended use of the real property at the time of its acquisition by the town; and
(3) Whether the conditions and circumstances of the use of the real property have undergone change with respect to intended town use of the real property; and
(4) What constitutes surplus property, in terms of the original intent, and whether the real property is surplus property; and
(5) The basis of the vacation of town-owned public interest in real property; and
(6) Findings of fact and conclusions of law in support of the action to be taken; and
(7) Whether and how the public would benefit from the proposed vacation.

(d) If, following the public hearing held as set forth above, the town council decides to pursue vacation of the town-owned public interest in real property, town council will direct the preparation of a resolution declaring the subject real property interest as surplus to the town's needs, containing the details of the proposed disposition, and setting a date for an adoption hearing for the resolution no less than 30 days form the date of the decision and direction to prepare the resolution. The applicant is responsible for all recording costs.

(e) Notwithstanding the foregoing process, after review and consideration of the report referenced in subsection (a) of this section, town council, in its discretion, may determine that to proceed, subsections (c) and/or (d) are not required if:

(1) The conveyance is back to the original grantor(s), its successors and assigns, who are currently the abutting owner(s); or
(2) It is part of another process, such as:
    a. Straightening of a real property boundary line in connection with a boundary dispute;
    b. Settling an action to quiet title; or
    c. Other like proceeding, as determined in the discretion of the town council upon the consideration of the director's recommendation; or
(3) It is a vacation that is *de minimis* in area, cost, and overall impact.

Upon finding any of the items enumerated in this subsection (e), the town council may exempt the transaction in question from continuing with the procedures set forth in paragraphs (c) and/or (d) and continue with the determination concerning the vacation of the subject real property interest. The town council, however, may apply any of the considerations contained therein that it deems relevant and helpful in rendering its decision.

Secs. 10-221--10-250. Reserved.

ARTICLE III. ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS[1]

DIVISION 1. GENERALLY

Sec. 10-251. Applicability.

All lands proposed for development shall be suitable for the various purposes proposed in the request for approval. In addition to the standards contained in this chapter, the developer shall demonstrate to the satisfaction of the director that the proposed development is specifically adapted and designed for the uses anticipated, including lot configuration, access, and internal circulation. The developer shall also demonstrate that the proposed development complies with all other provisions of the Fort Myers Beach Comprehensive Plan, this code, and other laws, ordinances, and regulations, as applicable.

Sec. 10-252. General design standards.

The size, shape, and orientation of a lot and the siting of buildings shall be designed to provide development logically related to trees, topography, solar orientation, natural features, streets, and adjacent land uses. All development shall be designed to maximize the preservation of natural features, trees, tree masses, wetlands, beaches, and sites which have historical or archaeological significance, scenic views, or similar assets. The U.S. Secretary of the Interior's Standards for Rehabilitation are the recommended guidelines for all development involving historic resources.

Sec. 10-253. Consideration of flood hazards.

Development plans must comply with applicable coastal and floodplain regulations as set forth in articles III and IV of ch. 6.

Sec. 10-254. Street names.

Street names shall not be used which will duplicate or be confused with the names of existing streets. New streets that are an extension of or in alignment with existing streets shall bear the same name as that borne by such existing streets. All courts and circles should have one name only. All proposed street names shall be approved in writing by the director and be indicated on the plat, if any, and on the site plan.

Sec. 10-255. Placement of structures in easements.

No buildings or structures shall be placed in easements where placing a building or structure in the easement is contrary to the terms of the easement or interferes with the use of the easement.

Sec. 10-256. Off-street parking and loading requirements.

(a) Off-street parking requirements for developments that are subject to this chapter are specified in ch. 34, article IV, division 26. The development order drawings shall show all parking areas to be provided on the project. Off-street parking for all projects that are subject to this chapter shall comply with the off-street parking requirements specified in ch. 34.

(b) Off-street loading requirements for developments that are subject to this chapter are specified in ch. 34, article IV, division 25. The development order drawings shall show all off-street loading areas to be provided on the project.

Sec. 10-257. Refuse disposal facilities.

All storage areas for refuse must be adequately shielded by a landscaped screen or fencing along at least three sides.

Secs. 10-258--10-284. Reserved.

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[1]***Cross reference(s)***--*Buildings and building regulations, ch. 6; design standards in articles III & IV of zoning regulations, ch. 34; commercial design standards, 34-991 et seq.*

DIVISION 2. TRANSPORTATION, ROADWAYS, STREETS, and SIDEWALKS

Sec. 10-285. Connection separation.

(a) ***Generally.*** In addition to meeting the other provisions of this section, when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways as shown in Table 10-1, which is based on the type of street to which it is being connected.

TABLE 10-1. CONNECTION SEPARATION

When Connected to this Street Type:	*Centerline Distance:*
Major street	250 feet
Local street	125 feet
Accessway	60 feet

(b) Driveways to a single residential building of two dwelling units or less on local streets may be spaced closer than the connection spacing requirements specified in Table 10-1.

(c) Where existing lots are being developed or redeveloped, the director shall determine whether new access points can be assigned, or existing access points can be consolidated or eliminated, to achieve the minimum connection spacings in Table 10-1. To this end, the director shall balance spacing and safety concerns, and may require that access points on corner lots be placed on the less-traveled street or may authorize lesser separation distance if joint access with the adjoining property can be provided to preserve or maximize driveway connection separation distances.

(d) Approval of connection locations does not imply that such connection is permitted a crossover through any median divider in existence now or in the future. In these instances, approval of the median opening or turning movement will be determined on a case-by-case basis. The purpose of this subsection is to make it clear that even though a parcel may be entitled to access to the road system, there is no entitlement to a median opening or left-in movement in conjunction with an approved access point.

(e) The town and other entities having maintenance jurisdiction over roads in the town retain the right to modify or restrict access, turning movements, median openings, and the use of traffic control devices on or affecting public rights-of-way as they deem necessary to address both operational and safety issues. This provision is applicable to existing as well as future development. No deviation or variance may be granted from this subsection.

Sec. 10-286. Traffic impact statements.

(a) Traffic impact statements shall survey current and anticipated traffic conditions and public transportation in order to identify potential traffic problems posed by the proposed development.

(b) Adverse site-related traffic impacts shall be mitigated by the applicant as specified in the traffic impact mitigation plan (when required by the director) and final development order.

(c) Traffic impact statements shall provide information regarding the development's traffic generation and impacts at the development's access points onto the adjacent street system.

(1) The level of detail required in a traffic impact statement is based on the number of vehicle trips that the proposed development will add to the adjacent road system.
(2) The traffic impact statement must be prepared in accordance with the current edition of the forms, procedures, and guidelines provided by the director.
(3) The developer or his representative shall assume full occupancy and a reasonable build-out of the development in the preparation of the traffic impact statement.
(4) The traffic impact statement must be prepared by qualified professionals in the fields of civil or traffic engineering or transportation planning.
(5) The traffic impact statement shall be submitted to the director for review of sources, methodology, technical accuracy, assumptions, findings, and approval.
(6) Approval of the traffic impact statement by the director may be revoked after one year has expired since the date of approval if the

assumptions upon which the traffic impact statement was approved are no longer valid.

(7) A significant change in the development proposal may result in the previous approval of the traffic impact statement being revoked at any time.

Sec. 10-287. Traffic impact mitigation plan.

A traffic impact mitigation plan shall be submitted when required by the director based on findings of adverse impact through the traffic impact statement process. The traffic impact mitigation plan shall be based on the approved traffic impact statement and shall identify in detail those on-site and off-site road and intersection improvements necessary to mitigate the proposed development's adverse impacts by maintaining or restoring adopted levels of service on the public road segments providing immediate access to the site, including any collector or arterial to which the adjacent street is tributary.

(1) The function of the traffic impact mitigation plan is to:
   a. Identify the responsibility for various road improvements falling to the several participants in the development process;
   b. Relate the various needed improvements to the occupancy and use of developed land, particularly regarding the relative timing of occupancy and availability of the road improvements; and
   c. Clearly identify the parties who will be responsible for the costs of the improvements.

(2) It shall be a fundamental policy assumption that road improvements specified by the traffic impact mitigation plan shall be over and above the required improvements to the Fort Myers Beach Comprehensive Plan's road network which are to be funded by the roads impact fee.

(3) Approval or approval with conditions of the development order shall be contingent on a finding by the director that the traffic impact mitigation plan:
   a. Is reasonably based on the assumptions and findings embodied in the approved traffic impact statement;
   b. Meets or exceeds the minimum actions required to alleviate the adverse impacts on the surrounding or adjacent road network; and
   c. Is consistent with all other local policy, particularly the Fort Myers Beach Comprehensive Plan and ch. 2, article VI, division 2, pertaining to roads impact fees, and any applicable development agreements.

(4) Timely implementation of the traffic impact mitigation plan shall be a condition of the final development order, and no certificate of occupancy or other permit to occupy or use developed land shall be issued until the traffic impact mitigation plan is implemented and improvements are in place in proportion to the demand the development generates.

Sec. 10-288. Turn lanes.

(a) Access to any street, road, or accessway will not be permitted unless turn lanes are constructed by the applicant where turning volumes make such improvements necessary to protect the health, safety, and welfare of the public or to reduce adverse traffic impacts on the adjacent street system.

(b) Turn lanes must be designed in accordance with standards set forth by Lee County. Wherever turn lanes are installed, the surface materials of the added lane must match the surface materials of the existing lanes. If the addition of turn lane(s) requires a lateral shift of the centerline or other lanes, the entire shifted area must be re-surfaced to create matching surfaces throughout. New and replacement pavement markings must be provided.

Sec. 10-289. Sidewalks.

(a) ***Pedestrian and bicycle facilities.*** The Town of Fort Myers Beach has committed to dramatically improving its facilities for pedestrians and bicyclists. The goals are to construct a quiet network of "hidden paths" on the bay side of Estero Island; to construct bicycle facilities where space is available; and to have a complete system of sidewalks on both sides of all major streets. Preliminary designs for many of the bicycle facilities and sidewalks are contained in the Estero Boulevard Streetscape Plan (WilsonMiller, June 2000) and the Old San Carlos Boulevard / Crescent Street Master Plan (Dover, Kohl & Partners, February 1999).

(b) ***Sidewalks required.*** Development that abuts a major street (as defined in this chapter) shall construct a sidewalk for the entire length of the property's frontage on the major street, unless a sidewalk has already been built at that location and remains in good physical condition.

(1) This requirement applies to all new buildings and also to "substantial improvements" to such buildings as defined in § 6-405.
(2) A sidewalk meeting all requirements of this section must be shown on the development order plans.
(3) The sidewalk must be completed prior to issuance of a certificate of compliance unless the developer posts a bond or other surety acceptable to the town as assurance of its completion.
(4) The sidewalks required by this section are site-related improvements.

(c) ***Location of sidewalk.*** This sidewalk may be constructed in the public right-of-way or the developer may choose to construct it outside the public road right-of-way on his own property.

(1) If the developer opts to construct the facility across his property in this manner, a perpetual sidewalk easement must be granted to the town for the full width and length of the sidewalk.
(2) The exact placement of all sidewalks, including location and elevation, is subject to approval:
    a. By the town manager, and
    b. For sidewalks on county rights-of-way, also by Lee County DOT.

(d) ***Width of sidewalk.*** Minimum sidewalk widths are determined by a property's category on the Future Land Use Map and the exact location of the sidewalk, as follows:

(1) *Pedestrian Commercial category:*
    a. 8 feet for sidewalks that are separated from the travel lane, parking lane, or paved shoulder by a planting strip at least 5 feet wide.
    b. 10 feet for sidewalks that immediately abut a travel lane, parking lane, or paved shoulder.
    c. 2 additional feet of width is required wherever this sidewalk immediately abuts a building.
(2) *All other categories:*
    a. 6 feet for sidewalks that are separated from the travel lane, parking lane, or paved shoulder by a planting strip at least 5 feet wide.
    b. 8 feet for sidewalks that immediately abut a travel lane, parking lane, or paved shoulder.
    c. 2 additional feet of width is required wherever this sidewalk immediately abuts a building.
(3) *Exceptions:* If consistent with the provisions of § 10-104, the director may permit minor administrative deviations where physical constraints preclude these minimum sidewalk widths. However, in no case shall an administrative deviation permit a sidewalk that is less than 5 feet wide.

(e) ***Construction specifications.*** The standard specifications for sidewalks are as follows:

(1) When plans have been prepared by the town for a specific area, the sidewalk shall be designed and built in accordance with those plans.
(2) In the absence of such plans, standard sidewalks shall be built as follows:
    a. Material: 4" Portland cement concrete (6" for driveway crossings)
    b. Base: 4" limerock base
    c. Subgrade: 6" type B subgrade
(3) The applicant may submit an alternate design, subject to the approval of the director, provided it is structurally equal to or better than the standard in subsection (e)(2).
(4) There may be no sudden elevation changes that would present a hazard to pedestrians.

(f) ***Maintenance.*** Sidewalks constructed in accordance with this section will be publicly maintained if constructed in the right-of-way, and may also be publicly maintained if constructed on a perpetual sidewalk easement that is accepted by the town council.

Sec. 10-290. Local streets.

Local streets shall be designed to discourage excessive speed and to discourage but not prohibit through traffic.

Sec. 10-291. Access to street required.

General requirements for access are as follows:

(1) The development must be designed so as not to create remnants and landlocked areas, unless those areas are established as common areas.

(2) All development must abut and have access to a public or private street constructed or improved to meet the standards in § 10-296. Any development order will contain appropriate conditions requiring the street to be constructed or improved as may be appropriate in order to meet the standards in § 10-296. Direct access for all types of development to major streets must be in accordance with the intersection separation requirements specified in this chapter.

Sec. 10-292. Public streets to connect to existing public street.

All streets that are dedicated to the use of the public shall connect to or be an extension of an existing public street. Entrance gates are not allowed (see § 34-1749).

Sec. 10-293. Private streets.

Private streets may be permitted and approved provided:

(1) They comply with the street design standards and the street construction specifications in this chapter;

(2) The appropriate notation is made on the site plan and the plat to identify it as a private street;

(3) All private streets shall be maintained through a covenant which runs with the land in the form of, but not limited to, a homeowners' or condominium association or such other legal mechanisms as will assure the owners of the abutting property that the street shall be continually maintained. The owners of the abutting property shall be provided with a legal right to enforce the assurance that the road be continually maintained. Legal documents which provide for the continual maintenance shall only be accepted after they are reviewed by the town attorney for compliance with this section; and

(4) Entrance gates are not allowed on private streets (see § 34-1749), except for entrance gates that may have been approved through the binding agreement that settled litigation over development rights in Bay Beach (see § 34-651).

Sec. 10-294. Continuation of existing street pattern.

The proposed street layout shall be coordinated with the street system of the surrounding area. Streets in a proposed development shall be connected to streets in the adjacent area to provide for proper traffic circulation.

Sec. 10-295. Street stubs to adjoining property.

Street stubs to adjoining areas shall be provided where deemed necessary by the director to give access to such areas or to provide for proper traffic circulation. Street stubs shall be provided with a temporary cul-de-sac turnaround within the minimum required platted right-of-way. When adjoining lands are subsequently developed, the developer of the adjoining land shall pay the cost of extending the street and restoring it to its original design cross section. All interconnections shall be designed to discourage but not prohibit use by through traffic.

Sec. 10-296. Street design and construction standards.

(a) ***Generally.*** All streets and alleys shall be designed in accordance with the criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers, and constructed and improved in accordance with the specifications set out in this section, as well as the other requirements of this division.

(b) ***Right-of-way or easement width.*** All local streets to be established and constructed in accordance with this chapter shall have right-of-way or roadway easement widths selected in accordance with the design criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers.

(c) ***Street design and construction standards.*** All street improvements shall comply with the standards and specifications listed in Table 10-2 for the applicable development category.

(d) ***Street development categories.*** For purposes of interpreting the specifications contained in Table 10-2, development categories are defined as follows (with densities computed in accordance with § 34-632):

(1) **Category A** shall include streets and alleys in commercial developments and all developments not described in categories B and C.
(2) **Category B** shall include streets and alleys in residential developments denser than 4 dwelling units per acre.
(3) **Category C** shall include streets and alleys in residential developments with 4 or fewer dwelling units per acre.

TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS

Category	Minimum Specifications
A B C	**1.** ***Construction in drainage swales.*** Allowable construction in drainage swales shall be as specified in § 10-296(o).
A B C	**2.** ***Piping materials.*** The types of piping materials allowed in rights-of-way shall be as specified in Lee County's land development code.
A B C	**3.** ***Curb and gutter type B, F, and drop or shoulder (valley).*** See FDOT Roadway and Traffic Design Standards, current edition.
A B C	**4.** ***Roadside swales.*** Roadside swales may be used in excessively drained and somewhat excessively drained to moderately well-drained soils, except where closed drainage is required by the director Roadside swales within street rights-of-way must have side slopes no steeper than 3 horizontal to one vertical. Normal swale sections must be a minimum of 12 inches deep. Where run-off is accumulated or carried in roadway swales and flow velocities in excess of two feet per second are anticipated, closed drainage or other erosion control measures must be provided. The director may grant deviations from these requirements under the provisions of § 10-104. However, no violations of SFWMD requirements or any other regulatory requirements may occur through the granting of any such deviations.
	5. ***Subgrade.***
A	a. 12-inch-thick (minimum), stabilized subgrade LBR 40. If the LBR value of the natural soil is less than 40, the subgrade must be stabilized in accordance with section 160 of the FDOT standard specifications.
B C	b. Six-inch-thick (minimum), stabilized subgrade LBR 40. If the LBR value of the natural soil is less than 40, the subgrade must be stabilized in accordance with section 160 of the FDOT standard specifications.
	6. ***Pavement base.***
A	a. Eight-inch compacted limerock.
B C	b. Six-inch compacted limerock.
	Any deviation from these standards must meet the specifications established by FDOT standards.
	7. ***Wearing surface.***
A	a. One-and-one-half-inch asphaltic concrete of FDOT type S-III.*
B C	b. For roads to be publicly maintained, one-and-one-half-inch asphaltic concrete of FDOT type S-III*. The applicant may install two three-quarter-inch-thick courses of asphalt concrete with the second course to be placed after substantial build-out of the

TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS	
Category	**Minimum Specifications**
	development. An assurance of completion is required for the second course of asphalt. This provision is subject to the approval of the director.** For roads to be privately maintained, one-inch asphaltic concrete of FDOT type S-III is acceptable. ** However, the applicant may submit a request for an administrative deviation in accordance with § 10-104 for an alternative design, including but not limited to Portland cement concrete, for public or private streets. The design will be subject to structural analysis for comparison with asphaltic concrete.* *** The use of paver block is permitted subject to approval of the director at time of development order approval without the need to file for an administrative deviation pursuant to § 10-104.*
A B C	**8.** ***Grassing and mulching.*** Prior to the acceptance of the streets or the release of the security, the developer will be responsible for ensuring that all swales, parkways, medians, percolation areas, and planting strips are sodded, seeded, or planted, and mulched in accordance with section 570 of the FDOT standard specifications.
A B C	**9.** ***Street name and regulatory signs.*** Street name and regulatory signs will be installed by the developer at all intersections and on the streets in the development prior to the acceptance of the streets or the release of the security. Regulatory signs will not be required at parking lot entrances for parking lots containing less than 25 parking spaces.
A B C	**10.** ***Street lighting.*** Street lighting may be installed at the developer's option and expense. Where street lighting is to be provided, the streetlight improvements must be maintained and operated through a covenant which runs with the land in the form of deed restrictions, a homeowners' or condominium association, or such other legal mechanisms as will assure the beneficiaries of the service that the street lighting will be continually operated and maintained. Regardless of the method chosen to provide for the continual maintenance and operation of the streetlights, the beneficiaries of the service must be provided with a legal right to enforce the assurance that the lighting will be continually operated and maintained. The legal documents which provide for the continual maintenance and operation of the lighting may only be accepted after they are reviewed and approved by the town attorney for compliance with this section. In the alternative, the town may satisfy this requirement by establishing a street lighting assessment which includes operation and maintenance of the streetlights.
A B C	**11.** ***Street and intersection improvements; traffic control devices.*** a. The developer must design and construct such traffic control devices and acceleration, deceleration, turning, or additional lanes, referred to in this subsection as traffic improvements, as may be needed. b. Traffic control devices and acceleration, deceleration, turning, and additional lanes must be indicated on the development plan. These traffic control devices must be designed and shown on the development plans as per MUTCD standards. c. Traffic control devices installed in accord with Table 9-4-11b may be mounted on a nonstandard type of support system as described in the Traffic Control Devices Handbook (FHWA publication), provided that mounting height, location standards, and all other standards as described in sections 2A-24 through 2A-27 of the MUTCD may not be compromised, and all such supports must be of break away design. The sign support system may not provide borders around the sign that have the effect of changing the required shape, message, or border area of the sign. An enforceable agreement providing for maintenance and upkeep of such signs by the installer must be provided to the director. This agreement must include the name, address, and phone number of a contact person who will represent the installing party.
A B C	**12.** ***Underdrains.*** Underdrains may be required on both sides of streets if, in the opinion of the director, soils data indicate that such drains would be necessary. In cases where there is a prevalence of soils that exhibit adverse water table characteristics, underdrains or fill or some other acceptable alternative that will provide necessary measures to maintain the structural integrity of the road will be required. The determination of need will be made by reference to the applicable portions of the most recent edition of the Soil Survey for Lee County, Florida, as prepared by the U.S. Department of Agriculture, Soil Conservation Service, or according

TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS	
Category	**Minimum Specifications**
	to information generated by the developer's engineer. a. Wherever road construction or lot development is planned in areas having soil types with unacceptable water table characteristics, underdrains or fill must be provided and shown on the engineering plans. Underdrains must be designed with outlets at carefully selected discharge points. Erosion control measures must be provided as needed at all discharge points. b. Wherever road cuts in otherwise suitable soils indicate that the finish grade will result in a road surface to water table relationship that adversely exceeds the degree of limitation stated above, underdrains or other acceptable alternative that will provide necessary measures to maintain the structural integrity of the road will be required.

(e) ***Conformance with state standards.*** All construction materials, methods, and equipment shall conform to the requirements of the FDOT Standard Specifications for Road and Bridge Construction, current edition, and such other editions, amendments, or supplements as may be adopted by the FDOT.

(f) ***Dedication of right-of-way and completion of improvements.*** Prior to acceptance of the streets or the release of security, the developer shall dedicate such rights-of-way and complete such improvements, or provide funds for the completion or installation of such improvements in conformance with the standards and specifications of this chapter.

(g) ***Reserved.***

(h) ***Reserved.***

(i) ***Reserved.***

(j) ***Intersection design***. Intersections shall be designed in accordance with the criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers. This shall include the angles of intersecting streets and the radius of curbs and property lines at intersections.

(k) ***Culs-de-sac.***

(1) Dead-end streets, designed to be so permanently, are generally not permitted but may be unavoidable due to adjoining wetlands, canals, or preserves. When the director deems a dead-end street to be unavoidable, the dead end shall be provided with a cul-de-sac that is designed in accordance with criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers.

(l) ***Reserved.***

(m) ***Privately maintained accessways.*** The following privately maintained accessways shall not be required to meet the minimum roadway right-of-way widths specified in subsection (b) of this section:

(1) Parking lot aisles (as defined in this chapter) – minimum dimensions are provided in division 26, article IV, chapter 34;
(2) Parking lot accesses (as defined in this chapter) – minimum dimensions are provided in division 26, article IV, chapter 34;
(3) Driveways (as defined in this chapter); and
(4) Accessways which meet the following three requirements:
    a. Provide vehicle access to 100 or fewer multifamily residential units;

b. Meet the dimensional requirements for parking lot accesses in division 26, article IV, chapter 34; and
c. Provide for utility easements in accordance with § 10-355(1) if utilities are to be located in or adjacent to the accessway.

(n) ***Streets and driveways in wetlands.*** Notwithstanding other provisions of this chapter, new roads or driveways permitted in wetlands in accordance with policy 4-B-9 or 6-D-4 of the Fort Myers Beach Comprehensive Plan shall be bridged so that the predevelopment volume, direction, distribution, and surface water hydroperiod will be maintained.

(o) ***Work in town, county, or state right-of-way.***

(1) Except for emergency repair work, no individual, firm, or corporation may commence any work within public rights-of-way or easements without first having obtained a permit from the entity with maintenance responsibility. For the purposes of this section only, "work" means:
   a. excavation, grading, or filling activity of any kind, except the placement of sod on existing grade; or
   b. construction activity of any kind except the placement of a mail or newspaper delivery box in accordance with § 34-638.
(2) The town will not issue a permit for any private road to connect to any town- or county-maintained road without approval of drainage plans prepared by a registered engineer. (See § 10-296 for approved utility piping materials.)
(3) For single residential buildings of two dwelling units or less on town- or county-maintained streets, the county department of transportation will do all necessary field survey work to establish the proper grade, pipe diameter, and length for driveway culverts. Prior to beginning construction, a residential driveway permit must be obtained from the Lee County Department of Community Development in accordance with the county's administrative code AC 11-12.
(4) *Construction in drainage swales.* There are three conditions of roadside drainage (not including curb and gutter) which govern the construction of any structure in the drainage swale:
   a. *Condition A.* Drainage swales of 0.7 feet (8 ¼ inches) or less below the edge of road pavement, or swales or ditches designed to provide driveway access without culvert pipe.
   b. *Condition B.* Drainage swales beginning 0.70 feet (8 ¼ inches) below the edge of the road to:
      1. *Residential.* Depth equal to 0.70 feet plus pipe diameter and the top wall thickness (i.e., 2.15 feet (25 ¾ inches)) for 15-inch RCP; or
      2. *Commercial.* Depth equal to one foot plus the pipe diameter and the top wall thickness (i.e., 2.45 feet (29 3/8 inches)) for 15-inch RCP.
   c. *Condition C.* Beginning at:
      1. *Residential.* Depth equal to 0.70 feet plus the pipe diameter and the top wall thickness; or
      2. *Commercial.* Depth equal to one foot plus the pipe diameter and the top wall thickness and to any depth greater than the above.
(5) No pipe, either driveway or continuous swale pipe, will be permitted under Condition A. For this condition, driveways must be paved following the slope of the designed swale grade.
(6) For Condition B, property owners may install a properly sized pipe in the swale for driveway purposes providing they meet the conditions of subsections (1) and (2) in the section of specifications of structures.
(7) For Condition C, the owners may install either properly sized driveway pipe or continuous pipe across the property. If continuous property pipe is proposed, one or more standard catch basins with grates will be required as dictated by the specific conditions of the area.

Secs. 10-297--10-320. Reserved.

DIVISION 3.
SURFACE WATER MANAGEMENT

Sec. 10-321. Generally.

(a) ***Stormwater system required; design to be in accordance with SFWMD requirements.*** A stormwater management system shall be provided for the adequate control of stormwater runoff that originates within a development or that flows onto or across the development from adjacent lands.

(1) Development parcels exceeding the thresholds for a SFWMD environmental resource permit shall have stormwater management systems designed in accordance with SFWMD requirements and shall provide for the attenuation/retention of stormwater from the site. Issuance of a SFWMD permit shall be accepted as compliance with this division, and review of these projects shall be limited to external impacts and wet season water table elevation.

(2) Development parcels larger than one acre but falling below the thresholds for a SFWMD individual environmental resource permit (2 acres impervious surface or 10 acres total project area) will have their drainage plan reviewed and approved by the director for compliance with the Basis of Review for Environmental Resource Permit Applications (SFWMD). For purposes of this review:

a. Landowners are encouraged to provide required retention/detention of stormwater underground rather than in surface impoundments. If surface impoundments are used, they must be placed in the rear yard of all lots.

b. "Dry flood-proofing" of sidewalk-level commercial and professional space is the preferred method of flood protection in the Future Land Use Map's Pedestrian Commercial category (see § 6-472(4)). The town deems dry flood-proofed floor space to be equivalent to elevating commercial floor space above the 100-year flood elevation for purposes of compliance with the building floor elevation requirements in the Basis of Review.

c. The limitation on land uses provided by the Fort Myers Beach Comprehensive Plan provides reasonable assurances that hazardous materials will not enter the municipal drainage system, thus eliminating the need for the retention/detention pretreatment described in subsection 5.2.2(a) in the Basis of Review.

d. The town encourages SFWMD to use these same interpretations when reviewing permit applications for development parcels within the town.

(3) Development parcels one acre or smaller shall also comply with § 10-321(a)(2) except that on-site retention or detention of stormwater to SFWMD standards is not required if both of the following conditions are met:

a. *Rainfall from building roofs.* Rainfall is collected from roofs of buildings and directed to depressed and permeable landscaped areas or to underground infiltration chambers instead of to hard surfaces; and

b. *Other impervious surfaces.* At least 50% of hard surfaces on the site (excluding buildings) are surfaced with one of the following permeable surfaces placed over a well-drained base:

1. Porous (pervious) asphalt or concrete.
2. Paving brick or blocks laid with sufficient space between each unit to allow for infiltration of stormwater.
3. Clean (washed) angular gravel (such as FDOT #57 stone). When used for parking spaces or aisles, gravel surfaces shall be stabilized in accordance with § 34-2017(b)(1).
4. Proprietary cellular or modular porous paving systems installed in accordance with manufacturers' specifications.

(4) For purposes of stormwater management calculations, the assumed water table must be established by the design engineer in accordance with sound engineering practice. The director will review the stormwater management system on all development order projects for compliance with this chapter and may require substantiation of all calculations and assumptions involved in the design of stormwater management system.

(b) ***Stormwater discharges and erosion control.***

(1) Illicit stormwater and non-stormwater discharges are not permitted into municipal separate storm sewer systems. See detailed regulations in article IV of this chapter.

(2) Construction activity must utilize best management practices for sediment and erosion control. See detailed regulations in article IV of this chapter.

(c) ***Crown elevation of local subdivision streets.*** Minimum elevation of the crown of new streets shall be 5.5 feet above mean sea level. In order to accommodate differences in elevation between interior streets and exterior streets, when such exterior streets exist below the minimum elevation, elevation variations along the interior streets necessary to provide a sloped lowering of the interior streets to meet the existing exterior street elevations shall be permitted in accordance with applicable generally accepted engineering standards if approved by the director.

(d) ***Caution to plan adequate elevation and drainage facilities.*** Some areas may require street crown elevations exceeding the minimums stated in this section, and subdivision designers are cautioned to plan both adequate elevation and drainage facilities to prevent any flooding which could endanger health or property.

Sec. 10-322. Roadside swales.

Roadside swales within street rights-of-way shall have side and back slopes no steeper than 3 to 1. Normal swale sections shall be a minimum of 12 inches deep and a maximum of 36 inches below the outside edge of the street pavement. Runoff may be accumulated and carried in the swales in the right-of-way. Where flow velocities in excess of two feet per second are anticipated, curb and gutter or other erosion control measures shall be provided.

Sec. 10-323. Rear lot line swales and ditches.

Rear lot line swales and ditches should be used only where adequate provisions for maintenance are provided.

Sec. 10-324. Open channels and outfall ditches.

Drainage plans shall provide that stormwater be collected in properly designed systems of swales, underground pipes, inlets, and other appurtenances, and be conveyed to an ultimate positive outfall. Where permitted, open drainageways shall retain natural characteristics and be designed and protected so that they do not present a hazard to life and safety. Protection against scour and erosion shall be provided as required by the director.

Sec. 10-325. Reserved.

Sec. 10-326. Inlet spacing.

Drainage inlets for roadways with closed drainage systems shall be designed in accordance with state department of transportation guidelines. Inlets shall have the capacity to handle the design flow.

Sec. 10-327. Dedication of drainage system; maintenance covenant.

(a) All necessary drainage easements and structures shall be dedicated to the appropriate entity or association at no expense to the town. Dedication for drainage ditches shall include a suitable berm (shoulder) width for maintenance operations. The berm shall be cleared of trees, shrubs, and other obstructions and shall have adequate vehicular access. Suitable maintenance areas for the other drainage structures shall be located in drainage easements or rights-of-way. Dedications shall appear in the recorded plat or by deed.

(b) The stormwater management system shall not be dedicated or accepted by the town. This system shall be maintained through a covenant which runs with the land in the form of, but not limited to, deed restrictions, a homeowners' or condominium association, or such other legal mechanisms as will assure the beneficiaries of the stormwater management system that the drainage will be continually maintained. Regardless of the method chosen to provide for the continual maintenance of the stormwater management system, the beneficiaries shall be provided with a legal right to enforce the assurance that the drainage will be continually maintained. The legal documents which provide for the continual maintenance of the

stormwater management system shall be accepted only after they are received and approved by the town attorney for compliance with this section.

Sec. 10-328. Reserved.

Sec. 10-329. Excavations.

(a) ***Applicability.*** This section provides the permitting and development order requirements for all excavations except:

(1) The removal of surplus material generated from the construction of roads, sewer lines, storm sewers, water mains, or other utilities;
(2) Moving materials for purposes of surface water drainage (swales, ditches, or dry retention), provided that excavated materials are not removed from the premises;
(3) The temporary removal of topsoil from a lot for landscaping purposes; or
(4) The removal of surplus material resulting from the excavation of a building foundation or swimming pool that is authorized by a valid building permit.

(b) ***Excavation types and required approvals.*** Excavations are generally constructed for stormwater retention or as a development site amenity. Except as specifically provided in this chapter:

(1) All excavations require a development order and are also subject to permitting requirements of SFWMD; and
(2) Excavations whose fill material will be relocated off the development site may be required to obtain planned development zoning in accordance with ch. 34, article III, division 6.

(c) ***Standards.*** All new excavations regulated by this section will be subject to the following standards:

(1) *Setbacks for excavations.*
    a. No excavations will be allowed within:
        1. Twenty-five feet of an existing street right-of-way line or easement for a local street;
        2. Fifty feet of any private property line under separate ownership unless granted an administrative deviation in accordance with § 10-104. In no event may the setback for an excavation from a private property line may be less than 25 feet. This setback does not apply to lots developed concurrently with the excavation for water retention when part of a development order.
    b. All excavation setbacks must be measured from the mean high water (MHW) or the waterbody control elevation line.
(2) *Maximum controlled water depth.* Excavations may not have a controlled water depth greater than 12 feet.
(3) *Excavation bank slopes.* The design of shorelines of excavations must be sinuous rather than straight to provide increased length and diversity of the littoral zone. Sinuous means serpentine, bending in and out, wavy, or winding. The banks of all excavations regulated by this section must be sloped at a ratio not greater than 4 horizontal to 1 vertical from the top of the excavation to a water depth of 4 feet below the dry season water table. The slopes must be not greater than 2 horizontal to 1 vertical thereafter, except where the director determines that geologic conditions would permit a stable slope at steeper than a 2 to 1 ratio. Excavation bank slopes must comply with the shoreline configuration, slope requirements, and planting requirements for mimicking natural systems as specified in § 10-418 of Lee County's land development code.

Cross reference(s)*--Excavations generally, § 34-1651.*

Secs. 10-330--10-350. Reserved.

DIVISION 4. UTILITIES

Sec. 10-351. Generally.

Connections to potable water systems and sanitary sewer systems shall be designed and constructed in accordance with county, state, and federal standards.

Sec. 10-352. Connection to potable water system.

All developments must connect to the town's potable water system.

Sec. 10-353. Connection to sanitary sewer system.

(a) All developments must connect to the Lee County sanitary sewer system.

(b) By January 1, 2005, all septic tanks remaining in the incorporated area of the Town of Fort Myers Beach must be disconnected and must be properly abated in accordance with state regulations. Connections to those septic tanks must be rerouted into Lee County's sanitary sewer system.

Sec. 10-354. Connection to reuse water system.

Wherever reuse water is available and a connection is technically feasible, the irrigation of grassed or landscaped areas shall be provided for through the use of a second water distribution system supplying treated wastewater effluent or reuse water. This reuse water system shall be separate and distinct from the potable water distribution system and shall be constructed and operated in accordance with the rules of the state department of environmental regulation, specifically F.A.C. ch. 17-610.

Sec. 10-355. Easements; location of water and sewer lines.

Water distribution and sewage collection lines shall not be installed under the paved traveled way of any major street except as necessary to cross under the street. Unless otherwise permitted by the town and county, water distribution and sewage collection lines that cross under major streets shall be installed perpendicular to the street and for county roads shall comply with the requirements of the county administrative code for utility construction activities in county-owned or county-maintained roadway and drainage rights-of-way and easements.

(1) For all new local roads or accessways in proposed developments, utility easements shall be provided; actual width shall be determined on a case-by-case basis.
(2) Sewage collection lines may be installed under the traveled way of local streets.
(3) Utility easements shall be shown on the site plan, and electric, telephone, and cablevision lines shall be installed within the easements. Water distribution lines and sewage collection lines shall be installed within the right-of-way or within the easements.

Sec. 10-356. Reserved.

Sec. 10-357. Inspection of water and sewer systems; piping materials.

(a) The director shall periodically inspect all construction of water and sewage systems.

(b) The director shall immediately call to the attention of the developer and his engineer any failure of work or material.

(c) The director may suspend work that is not in conformity with approved plans and specifications, and shall require inspections as necessary.

(d) After required improvements have been installed, the developer's engineer shall be required to submit certification, including as-built drawings, to the town that the improvements have been constructed substantially according to approved plans and specifications.

(e) Approved utility piping materials for use in rights-of-way are listed in § 10-296(d).

Secs. 10-358--10-380. Reserved.

DIVISION 5. FIRE SAFETY [2]

Sec. 10-381. Generally.

Fire protection systems shall be designed and constructed in accordance with town, county, state, and federal standards, including the requirements established by the Florida Fire Prevention Code, as may be amended.

Sec. 10-382. Reserved.

Sec. 10-383. Variances.

Lee County's construction board of adjustments and appeals has been granted jurisdiction to grant variances from the provisions of this division. The procedures and criteria applicable to the variance proceedings are set forth in § 6-71 *et seq.*

Sec. 10-384. Minimum standards for all developments.

(a) ***Building classes.*** Building classes for purposes of this section are as follows:

(1) One and two dwelling unit developments.
(2) Multifamily developments with three to 6 dwelling units per building and not exceeding two stories in height.
(3) Multifamily developments with more than 6 dwelling units per building, or more than two stories in height, and all commercial areas.
(4) Hazardous storage areas (as defined in the building code).

(b) ***Fire department access.*** Except as noted in this subsection, buildings that fall into the classes set forth in subsections (a)(3) and (a)(4) of this section, and any unusual and potentially hazardous circumstances as determined by the fire official, shall provide a 20-foot-wide fire department access lane in the rear of such building. This shall be an identified stabilized surface adequate to carry the load of fire apparatus. Exceptions to this requirement are as follows:

(1) Buildings provided with a complete automatic fire sprinkler system.
(2) Where, in opinion of both the fire official and the fire chief due to the size, construction, location, or occupancy of a building, the access width may be reduced or omitted.

(c) ***Fire flows.*** Fire flows for all developments shall be determined according to this division before the issuance of a development order. The engineer, contractor, or installer of water supply systems in new developments shall demonstrate, by actual test, that the capacity of the water supply system will meet fire protection design requirements. A fire flow of the existing public water system shall be made before the issuance of a development order. Fire flow tests shall be witnessed by the fire department and other authorities having jurisdiction who desire to do so.

Sec. 10-385. Design standards.

(a) ***General design standards.*** Fire protection and public water systems shall be designed by an engineer and constructed in accordance with town, county, state, and federal standards, including the requirements established by the Florida Fire Prevention Code, as they may be amended.

(b) ***Fire flows.*** The water distribution system shall be capable of delivering fire flows as follows:

(1) Requirements for one- and two-family developments are as follows:

TABLE 10-3. FIRE FLOWS

Distance Between Buildings	Needed Fire Flow (gpm)
Over 30 feet	500
0 to 30 feet	750

Developments not capable of delivering the required fire flow shall provide automatic sprinkler systems in accordance with NFPA #13D most current adopted edition or shall provide an additional source of water for fire protection in accordance with § 10-386.

(2) All other building shall calculate required fire flows in accordance with the formula shown in subsection (b)(3) of this section. This formula establishes a base flow from which the degree of hazard and credit for sprinkler protection will result in a final needed fire flow. NFPA #13 most current adopted edition shall be used for the purpose of determining hazard classification.

[2] ***Cross reference(s)***--*Building codes, ch. 6.*

TABLE 10-4. FIRE FLOWS FOR OTHER BUILDINGS	
Classification	**Application**
Light	Light
Ordinary I and II	Ordinary
Ordinary III and higher	High

(3) Fire flow is based on the following formula: F = 18 multiplied by C multiplied by A.

TABLE 10-5. CO-EFFICIENTS FOR FIRE FLOW FORMULA
F = Gallons per minute flow at 20 pounds per square inch residual.
C = Constant based on type of building construction.
Coefficients based on construction type:
1.5 = Wood (type VI).
1.0 = Ordinary (type V).
0.8 = Noncombustible (type III and IV).
0.6 = Fire resistive (type I and II).
A = The square root of the gross floor area (as defined in the Florida Building Code) of all floors.
Fire resistive construction need only be calculated on the three largest successive floors.
A four-hour fire resistive wall may be used to reduce total square footage of a building providing the wall intersects each successive floor of the building.
BF = Base flow established from the formula F = 18 C multiplied by A.
FF = BF multiplied by 0.75 (light hazard occupancy).
FF = BF multiplied by 1 (ordinary hazard occupancy).
FF = BF multiplied by 1.25 (high hazard occupancy).

If the building is protected by an automatic sprinkler system installed in accordance with all state and local codes, the fire flow requirement will be deemed to have been satisfied.

(4) A minimum flow in all cases will be 500 gallons per minute with a 20 pounds per square inch residual.

(5) In areas that cannot meet a flow of 500 gallons per minute, alternate sources of water may be acceptable, subject to fire official approval.

(c) ***Water main installation.***

(1) Water mains for one and two dwelling unit developments shall be no less than 8 inches in diameter, and constructed in an external loop connected to intersecting water mains at a maximum distance of 1,500 feet.

(2) Water mains for multifamily developments with three to six dwelling units per building and not exceeding two stories in height shall be no less than 8 inches in diameter, and constructed in an external loop connected to intersecting water mains at a maximum distance of 1,500 feet.

(3) Water mains for multifamily developments composed of buildings with more than six units per building or more than two stories in height, and all commercial areas, shall be no less than 10 inches in diameter, and constructed in an external loop system with intersecting water mains installed every 2,000 feet.

(4) Water mains for all hazardous storage areas shall be no less than 12 inches in diameter and constructed in an external loop system with intersecting water mains installed every 2,000 feet. Fire hydrants shall be installed on intersecting water mains.

(5) Fire hydrants shall be installed so that the 4 ½-inch streamer connection is no less than 18 inches and no more than 24 inches above finished grade.

(6) The maximum allowed dead-end water line shall be no longer than one-half the distance required between intersecting water mains.

(7) Fire hydrants shall be located within 10 feet of the curbline of fire lanes, streets, or private streets when installed along such accessways.

(8) The applicant may submit a request for an administrative deviation in accordance with § 10-104 for alternatives to line sizing, dead-end and intersecting water main criteria if they embody sound engineering practices and are demonstrated by the applicant's professional engineer.

(d) ***Hydrant spacing.***

(1) Fire hydrant spacing shall be determined using the last available hydrant on the public water system as the PCP.

(2) Hydrant spacing for all developments shall be measured along the centerline of the street. For the purposes of this subsection, the term "street" shall include all road frontage, including roadways, drives, avenues, or any other road designation. Also included shall be any private drive designated as required fire department access.

(3) Fire hydrants shall be spaced as follows:

a. Hydrants for one to two dwelling unit developments shall be 800 feet apart as measured along the centerline of the street.

b. Hydrants for multifamily developments with three to six dwelling units per building and not exceeding two stories in height shall be 600 feet apart measured along the centerline of the street.

c. Hydrants for multifamily developments with more than six dwelling units per building or more than two stories in height, and commercial areas, shall be 400 feet apart as measured along the centerline of the street.

d. Hydrants for all hazardous storage areas, as defined in the building code, shall be 300 feet apart as measured along the centerline of the street.

(4) On-site fire hydrants shall be provided so that in no case shall there be a fire hydrant located more than 400 feet from all portions of the ground floor of any building. This shall be in addition to any other hydrant spacing requirement. This shall not apply to one- and two-family developments.

Secs. 10-386--10-410. Reserved.

DIVISION 6. OPEN SPACE, BUFFERING, AND LANDSCAPING [3]

Sec. 10-411. Reserved.

Sec. 10-412. Definitions.

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

Open space. Open space land means:
(1) Areas of preserved indigenous plant communities (see § 10-413).
(2) Beaches.
(3) Archaeological and historical sites, including any area that contains evidence of past human activity ranging from large mound and midden complexes to a group of artifacts, the boundary and extent of which is determined by a survey by a professional archaeologist.
(4) Protected trees.
(5) Landscaping of parking and vehicle use areas.
(6) Perimeter buffers.

Parking areas means all areas, paved or unpaved, designed, used, or intended to be used for the parking or display of vehicles, excluding:
(1) Areas used for parking or vehicle display which are under or within buildings;
(2) Parking areas serving a single structure of two dwelling units or less; and
(3) Areas used for the temporary storage of construction equipment.

Vehicle use area means all ground level impervious surfaces, including impervious parking areas, that may be used by vehicles for parking, circulation, and similar activities within the development. Street rights-of-way, roadway easements, and those areas excluded from the definition of "parking area" are not considered "vehicle use areas."

Cross reference(s)*--Definitions and rules of construction generally, § 1-2; definitions, § 10-1.*

Sec. 10-413. Major indigenous plant communities of the town.

(a) Major indigenous plant communities of the town are as follows:

TABLE 10-6. MAJOR INDIGENOUS PLANT COMMUNITIES

COMMUNITIES	FLUCCS CODE:
Shorelines	652
Coastal scrub (beach/dune)	322
Tropical hardwoods	426
Tidal flats	651
Mangrove swamps	612

Due to the extraordinary number of species of indigenous grasses, herbaceous and woody plants, and trees, each species cannot be listed in this section. The following source describes the types of indigenous plant species recognized as characteristic of each represented plant community: Florida Land Use, Cover and Forms Classification System, 1999. Department of Transportation, Surveying and Mapping, Geographic Mapping Section.

(b) Areas where invasive exotic vegetation has exceeded 75% of the plant species by quantity will not be considered indigenous plant communities.

Sec. 10-414. Landscape and irrigation submittals.

Prior to the approval of a development order, an applicant whose development is covered by the requirements of this division must submit the following landscape and irrigations plans:
(1) A landscaping and buffering plan that meets the requirements of § 10-154(7)(l).
(2) An irrigation plan that meets the requirements of § 10-154(7)(m).

[3] ***Cross reference(s)****--Environment and natural resources, ch. 14; zoning regulations pertaining to environmentally sensitive areas, § 34-1571 et seq.*

Sec. 10-415. Open space.

(a) All development must maintain, at a minimum, the open spaces outlined in the table below:

TABLE 10-7. REQUIRED OPEN SPACE

Type of Open Space	***Amount of This Type to be Maintained***
Indigenous plant communities – wetlands	100% – see subsection (b)(1)
Indigenous plant communities – coastal scrub (beach/dune)	100% plus 50-foot buffer for new lots – see subsection (b)(2)
Indigenous plant communities – other uplands	50% – see subsection (b)(3)
Beaches	see subsection (c)
Archaeological and historical sites	see subsection (d)
Protected trees	see subsection (e)
Landscaping of parking and vehicle use areas	see subsection (f)
Perimeter buffers	see subsection (g)

(b) ***Indigenous plant communities.*** The major indigenous plant communities in the town are listed in § 10-413. Dune vegetation and landward line of dune vegetation are defined in § 14-1. These plant communities must be identified in each application for a development order on the existing conditions drawing (see § 10-154).

(1) *Wetlands:* On each development site, 100% of indigenous plant communities that consist of wetlands must be maintained as open space, except as permitted by article II of ch. 26 to accommodate a shoreline structure or as permitted by article IV of ch. 14.

(2) *Dune vegetation:* On each development site, 100% of coastal scrub (beach/dune) vegetation must be maintained as open space, except as permitted by article III of ch. 6 and article I of ch. 14.

a. Where pedestrians need to cross dune vegetation, perpendicular dune walkovers may be constructed in this open space at intervals of at least 150 feet to protect the vegetation (see § 6-366(d)).

b. Newly created lots and parcels must be of sufficient size and dimension to ensure a 50-foot buffer between any structures (excluding dune walkovers) and the landward line of dune vegetation.

(3) *Other uplands:* On each development site, at least 50% of indigenous plant communities other than coastal scrub (beach/dune) vegetation that consists of uplands must be maintained as open space. However, if these communities contain occupied habitat for listed species, the additional requirements of division 8 of this article also apply.

(c) ***Beaches.*** Most of the town's beaches are located seaward of the 1978 coastal construction control line (CCCL) and thus are designated in the Recreation category on the Future Land Use Map and are zoned EC (Environmentally Critical).

(1) If the 1978 coastal construction control line (CCCL) crosses property in an application for a development order, this line must be shown on the existing conditions drawing (see § 10-154).

(2) Land that is zoned EC shall be maintained as open space, except as specifically permitted in § 34-652 or by other explicit provisions of this code such as § 6-366.

(d) ***Archaeological and historical sites.*** The nature and location of known archaeological and historic sites are listed on the Florida Master Site File, and level 1 and level 2 zones of archaeological sensitivity are identified in ch. 22.

(1) These resources must be identified in each application for a development order on the existing conditions drawing (see § 10-154(6)(j)).

(2) These resources are protected in accordance with the requirements of ch. 22.

(e) ***Protected trees.*** Protected trees are listed in § 14-380. Protected trees must be identified in each application for a development order on the landscape plan (see § 10-154(7)(l)). Protected trees can be removed only as allowed by article V of ch. 14.

(f) ***Landscaping of parking and vehicle use areas.*** Parking and vehicle use areas must be landscaped in accordance with § 10-416(c). These

required landscaped areas must be maintained as open space.

(g) ***Perimeter buffers.*** Perimeter buffers are required for certain proposed developments in accordance with § 10-416(c). These perimeter buffers must be maintained as open space.

Sec. 10-416. Landscaping standards.

(a) ***Tree planting required.*** Except in the DOWNTOWN and SANTINI zoning districts, landscaping for all developments, must include, at a minimum, one tree per 3,000 square feet of development area (not including existing waterbodies) in addition to the landscaping required for parking and vehicle use areas and perimeter buffers. General tree requirements may be reduced through the utilization of larger trees as specified in § 10-420(c)(2) or through use of an alternative landscape betterment plan (see § 10-419).

(b) ***Building edge plantings.*** In addition to the other requirements of this section, building edge plantings are required as follows:

(1) Building edge plantings are required for all commercial and mixed-use buildings or portions thereof that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405, on properties that are zoned in any of the following zoning districts:
   a. SANTOS (§ 34-648);
   b. DOWNTOWN (§ 34-671–680);
   c. SANTINI (§ 34-681–690);
   d. VILLAGE (§ 34-691–700);
   e. CB (§ 34-701–710); and
   f. CPD (commercial planned development) (§ 34-951–960).
(2) Where required, building edge plantings must be installed and maintained along at least 50% of the length of all walls that face on-site parking areas with more than 25 parking spaces.
(3) These planting areas must be at least five feet wide and may consist of landscape areas or adequately drained raised planters or planter boxes.
(4) These planting areas must include shrubs and ground cover plants, with a minimum of 50 percent coverage of the landscape area at the time of planting.
(5) Turfgrass is discouraged and is limited to 10 percent of the landscape area.

(c) ***Landscaping of parking and vehicle use areas.*** The provisions of this section apply to all new off-street parking or other vehicular use areas. Existing landscaping that does not comply with the provisions of this code must be brought into conformity, to the maximum extent possible, when: the vehicular use area is altered or expanded except for restriping of lots/drives, the building square footage is changed, or the structure has been vacant for a period of one year or more and a request for an occupational license to resume business is made. Consistent with the provisions of § 10-104, the director may permit administrative deviations where a conflict exists between the application of this division and the requirements for the number of off-street parking spaces or area of off-street loading facilities.

(1) *Vehicular overhang of landscaped areas.* The front of a vehicle may overhang any landscaped areas a maximum of 2 feet, provided the landscaped area is protected by wheel stops or curbing. Two feet of such landscaped area or walkway may be part of the required depth of each abutting parking space. Walkways must be designed with a minimum of 5 feet width that is clear of any vehicle overhang.
(2) *Internal landscaping.* All parking areas must be internally landscaped to provide visual relief and cooling effects and to channelize and define logical areas for pedestrian and vehicular circulation, as follows:
   a. Trees must be planted or retained in landscaped areas in parking areas, including landscaped areas reserved for future parking spaces, to provide for canopy coverage when the trees mature. At least one tree must be planted or retained for every 250 square feet of required internal planting area, and no parking space may be more than 100 feet from a tree planted in a permeable island, peninsula or median of ten-foot minimum width. Canopy requirements must be met with existing native trees whenever such trees are located within the parking area.
   b. Landscaped areas on the parking area perimeter or internal islands must equal or exceed a minimum of 10 percent of the total paved surface area. Landscaped

areas reserved for future parking spaces pursuant to § 34-2017(d) may not be included in this calculation.

c. The minimum average dimension of any required internal landscaped area must be 10 feet.

d. No more than an average of 10 parking spaces must occur in an uninterrupted row unless optional divider medians, as specified in subsection (c)(2)e of this section, are used. Where existing trees are retained in a landscaped island, the number of parking spaces in that row may be increased to 15.

e. Optional divider medians may be used to meet interior landscape requirements. If divider medians are used, they must form a landscaped strip between abutting rows of parking spaces. The minimum width of a divider median must be 10 feet. One tree must be planted for each 40 linear feet of divider or fraction thereof. Trees in a divider median may be planted singly or in clusters. The maximum spacing of trees must be 60 feet.

f. All interior landscaped areas not dedicated to trees or to preservation of existing vegetation must be landscaped with grass, ground cover, shrubs, or other approved landscaping materials, and this must be so noted on the landscape plans. Sand, gravel, rock, shell, or pavement are not appropriate landscape materials.

g. Optional tree grates may be utilized in parking areas for installation of up to a maximum of 50 percent of the required canopy trees. Tree grates must contain a minimum of 16 square feet of planting area and must provide a minimum of 5 air vents per grated area. These areas must be designed in such a manner that water will adequately drain and not be injurious to the health of the canopy tree. A cross section must be included with the landscape plans that demonstrates how the criteria of this subsection will be met.

(3) *Screening near sea turtle habitat.* Consistent with § 14-78(c), 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.

(d) ***Perimeter buffering.*** Perimeter buffering is required for certain proposed developments as described in this section. In addition, existing developments that do not comply with the provisions of this section must be brought into conformity to the maximum extent possible when the vehicular use area is altered or expanded (except for resealing or restriping), or when the building square footage is increased, or when there has been a discontinuance of use for a period of one year or more and a request for an occupational license to resume business is made.

(1) **Use categories.** In interpreting and applying the provisions of this section, development is classified into the following use categories:

i. **SF-R**: single-family and two-family residential, and multiple-family residential when less than 4 DU/acre.

b. **MF-R**: other multiple-family residential buildings, timeshare buildings, assisted living facilities, and bed & breakfast inns (but not including parking and vehicle use areas, which are included in use category "PRKG").

c. **COM**: commercial buildings including hotels/motels, resorts, and marinas, and public facility buildings (but not including parking and vehicle use areas, which are included in use category "PRKG").

d. **PRKG**: parking and vehicle use areas (as defined in § 10-412) for the MF-R and COM use categories, and including freestanding parking areas that are not associated with other development.

e. **ROW**: right-of-way or road easement.

(2) **Buffer requirements.** Table 10-8 describes the required buffer type to be provided by a proposed use that abuts certain existing uses (or, for vacant property, the existing zoning).

TABLE 10-8. BUFFER REQUIREMENTS

		Existing (or zoned) uses			
		SF-R	**MF-R**	**PRKG**	**ROW**
Proposed uses	**MF-R**	B	–	–	–
	COM	C / F	C / F	–	–
	PRKG	C / F	C / F	–	D

(3) **Buffer types.** Table 10-9 describes six buffer types. Each buffer type, identified by a letter, provides a minimum number of trees and shrubs per 100-linear-foot segment and indicates whether or not a wall or hedge is required within the buffer.

TABLE 10-9.
BUFFER TYPES (per 100 linear feet)

Buffer types:	**A**	**B**	**C**	**D**	**E**	**F**
Minimum width in feet	5	15	15	15	25	30
Minimum # of trees	4	5	5	5[3]	5	10
Minimum # of shrubs	–	Hedge[2]	18	Hedge[2]	30	Hedge[2]
Wall required[1]	No	No	Yes	No	Yes	No

Notes:

[1]*A solid wall, berm, or wall and berm combination, not less than 6 feet in height. All trees and shrubs required in the buffer must be placed on the residential side of the wall. The height of the wall must be measured from the average elevation of the street or streets abutting the property as measured along the centerline of the streets, at the points of intersection of the streets with the side lot lines (as extended) and the midpoint of the lot frontage. Walls must be constructed to ensure that historic flow patterns are accommodated and all stormwater from the site is directed to on-site detention/retention areas in accordance with SFWMD requirements.*

[2]*Hedges must be planted in double staggered rows and be maintained so as to form a 3-foot high continuous visual screen within one year after planting, except that in type F buffers the hedges must be 4 feet at installation and be maintained at 5 feet high.*

[3]*Trees within the ROW buffer must be appropriately sized in mature form so that conflicts with overhead utilities, lighting, and signs are avoided. The clustering of trees and use of palms within the ROW buffer will add design flexibility and reduce conflicts. Trees and shrubs may not be planted closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard (see § 6-4).*

(4) *Public facilities.* Public and quasi-public facilities, including, but not limited to, places of worship, parks, utility facilities, government offices, neighborhood recreational facilities, and private schools must provide a type C or F buffer if, in the absence of such a buffer, the proposed development will have a significantly adverse impact on adjacent existing residential uses.

(5) *Easements.* Buffer areas may not be located on any portion of an existing or dedicated street right-of-way or roadway easement. Variances or deviations from this requirement are prohibited.

(6) *Vehicle visibility.* Walls, berms and buffer plantings must not violate the vehicle visibility requirements of § 34-3131.

(7) *Development abutting natural bodies of water*.
   a. There must be a 25-foot wide buffer landward from the mean high water line of all natural bodies of water, as defined in ch. 34, except those portions of a shoreline having a seawall or retaining wall.
   b. Existing vegetation within the buffer area must be retained. The removal or control of exotic pest plants must not involve the use of heavy mechanical equipment such as bulldozers, front end loaders, or hydraulic excavators, unless approved at the time of development order.

(8) *Development abutting wetlands*. There must be a 75-foot separation between wetlands and all buildings or other impervious surfaces, as mandated by Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan (see § 34-638(c)).

(9) *Use of buffer areas*. Required buffers may be used for passive recreation such as pedestrian or bike paths, provided that:
   a. No required trees or shrubs are eliminated;
   b. Not more than 20 percent of the width of the buffer is impervious surface;
   c. The total width of the buffer area is maintained; and
   d. All other requirements of this chapter are met.

Sec. 10-417. Irrigation standards.

(a) To improve the survivability of required landscaping, cultivated landscaped areas must be provided with an automatic irrigation system, except as provided in subsection (c). All required irrigation systems must be designed to eliminate the application of water to impervious areas, including

roads, drives, and other vehicle areas. Required irrigation must also be designed to avoid impacts on indigenous plant communities.

(b) All new developments that have required landscaping must be irrigated by the use of an automatic irrigation system with controller set to conserve water. Moisture detection devices must be installed in all automatic sprinkler systems to override the sprinkler activation mechanism during periods of increased rainfall. Where existing irrigation systems are modified requiring the acquisition of a permit, automatic activation systems and overriding moisture detection devices must be installed.

(c) The requirement to provide an automatic irrigation system does not apply to trees planted in accordance with § 10-416(a), nor does it apply to cultivated landscaped areas that are planted entirely with native Florida plant species. A temporary irrigation system is strongly encouraged to improve survivability after initial planting; all plants that do not survive must replanted in the same manner as for all other required vegetation (see § 10-421).

Sec. 10-418. Reserved.

Sec. 10-419. Alternate landscape betterment plan.

Applications pursuant to this division are entitled to demonstrate that the intent of this division can be more effectively accomplished through an alternate landscape betterment plan. The following conditions must be met:

(1) The plan must be labeled as an alternate landscape betterment plan, and delineate, identify and locate all changes to the requirements of this division.
(2) No less than 75 percent of the trees installed must be native Florida species.
(3) If larger trees are substituted to reduce the minimum number of general trees required, all substituted tree must be no less than 3 inches in diameter at 12 inches above the ground, or less than 12 feet in height at the time of planting. In no case may general trees be reduced in number by more than 50 percent of the requirement. The actual ratio of the number of general trees reduced from the requirement will be dependent on:
    a. the proposed size and number of substituted trees,
    b. similarity to native vegetation on site or in the immediate vicinity,
    c. appropriate plant grouping for water needs, and
    d. the amount of immediate increase in site canopy.
(4) The plan must designate the botanical name (genus and species) and location of all plant material to be installed.
(5) The proposed alternate landscape betterment plan may be approved if the director determines that the intent of the minimum requirements of these provisions are being exceeded.

Sec. 10-420. Plant material standards.

(a) ***Quality of plant materials.*** Plant materials used to meet the requirements of this division must meet the standards for Florida No. 1 or better, as set out in Grades and Standards for Nursery Plants, Parts I and II, Florida Department of Agriculture and Consumer Services. Root ball sizes on all transplanted plant materials must also meet state standards.

(b) ***Use of native varieties.*** At least 75 percent of the trees and 50 percent of the shrubs used to fulfill these requirements must be native Florida species.

(c) ***Trees and palms.***

(1) For code-required trees, at least 50 percent of the trees at the time of installation must be a minimum of 10 feet in height, 2 inches in diameter at 12 inches above the ground, and have a 4-foot spread. The remaining code-required trees, at the time of installation, must be a minimum of 6 feet in height, 1 inch in diameter at 12 inches above the ground, and have a 3-foot spread.
    a. Palms must have a minimum of 10 feet of clear trunk at planting.
    b. Coconut palms must be varieties that are resistant to lethal yellowing.
    c. Trees having an average mature spread or crown less than 20 feet may be substituted by grouping the same so as to create the equivalent of 20-foot crown spread.

d. Trees adjacent to walkways, bike paths, and rights-of-way must be maintained with 8 feet of clear trunk.

(2) Larger trees substituted to reduce the minimum number of general trees, without the use of an alternative landscape betterment plan, must be no less than 4 inches in diameter at 12 inches above the ground and no less than 16 feet in height at the time of planting. The general trees requirement cannot be reduced in number by more than 50 percent.

(d) ***Shrubs and hedges.*** Shrubs must be a minimum of 24 inches (48 inches for type F buffers) in height above the on-site adjacent pavement surface required to be buffered and/or screened when measured at time of planting. They must be a minimum 3-gallon container size, and be spaced 18 to 36 inches on center. They must be at least 36 inches (60 inches for type F buffers) in height within 12 months of time of planting and be maintained at a height of no less than 36 inches (60 inches for type F buffers) above the adjacent pavement required to be buffered and/or screened in perpetuity, except for visibility at intersections and where pedestrian access is provided. Required hedges must be planted in double staggered rows and maintained so as to form a continuous, unbroken, solid visual screen within one year after time of planting.

(e) ***Mulch.*** A two-inch minimum layer, after watering-in, of wood or bark mulch or other recycled vegetation must be placed and maintained around all newly installed trees, shrubs, and ground cover plantings. Each tree must have a ring of mulch no less than 24 inches beyond its trunk in all directions. The use of cypress mulch is prohibited.

(f) ***Removal of invasive exotic plants.*** The following highly invasive exotic plants must be removed from the development area. Methods to remove and control invasive exotic plants must be included on the development order plans. A statement must also be included on the development order that the development area will be maintained free from invasive exotic plants in perpetuity. For purposes of this subsection, invasive exotic plants to be removed include:

(1) Melaleuca, *Melaleuca quinquenervia*
(2) Brazilian pepper, *Schinus terebinthifolius*
(3) Australian pine, *Casuarina* spp.
(4) Earleaf acacia, *Acacia auriculiformis*
(5) Downy rosemyrtle, *Rhodomyrtus tomentosus*
(6) Tropical soda apple, *Solanum viarum*
(7) Wedelia, *Wedelia trilobata*
(8) Beach naupaka (exotic inkberry), *scaevola frutescens*
(9) Chinaberry, *melia azedarach*

(g) ***Prohibited species.*** The following species of exotic plants are considered invasive and may not be used to fulfill any requirements of this division:

(1) Melaleuca, *Melaleuca quinquenervia*
(2) Brazilian pepper, *Schinus terebinthifolius*
(3) Australian pine, *Casuarina* spp.
(4) Earleaf acacia, *Acacia auriculiformis*
(5) Downy rosemyrtle, *Rhodomyrtus tomentosus*
(6) Tropical soda apple, *Solanum viarum*
(7) Woman's tongue, *Albizia lebbeck*
(8) Bishop wood, *Bischofia javanica*
(9) Carrotwood, *Cupianopsis anacardioides*
(10) Rosewood, *Dalbergia sissoo*
(11) Murray red gum, *Eucalyptus camaldulensis*
(12) Benjamin fig, *Ficus benjamina*
(13) Cuban laurel, *Ficus retusa*
(14) Chinese tallow, *Sapium sebiferum*
(15) Java plum, *Syzygium cumini*
(16) Rose apple, *Syzygium jambos*
(17) Cork tree, *Thespesia populnea*
(18) Wedelia, *Wedelia trilobata*
(19) Beach naupaka (exotic inkberry), *scaevola frutescens*
(20) Chinaberry, *melia azedarach*

(h) ***Credits for tree preservation.*** Except for prohibited species as listed above, every consideration must be given to retaining as much of the existing plant material as possible.

(1) Each existing native tree preserved in place which has a trunk diameter of 4 inches or greater measured at 4½ feet above the ground will receive a credit of 5 trees against the tree planting requirements of § 10-416(a).
(2) Native palms preserved in place which are 8 feet or greater from ground level to base of fronds will receive a credit of 3 trees.
(3) Existing sabal palms, identified on the development order plans and relocated on-site, will be given a 2-tree credit.
(4) Credits for existing trees may not be used to reduce the required parking canopy trees in parking or vehicle use areas.

(5) Existing native trees in buffers may be used for the same credits applied to the perimeter buffer requirements instead of to the tree planting landscape requirements of § 10-416(a), provided they occur within the same segment (100 feet or less) of a required buffer.
(6) Credits will apply only when the trees are labeled as protected-credit trees. If the protected-credit trees die within three years from the development order certificate of compliance, they must be replaced by the number of credit trees taken.
(7) Credits will apply where the preserved tree is in a barricaded area at least two-thirds the radius of the crown spread of the tree measured from the trunk center. In no case may this area radius be less than 2½ feet.
(8) For native pine trees, the barricaded area may be no less than the full crown spread of the tree, unless other measures such as tie-walls or special slope treatment are constructed for additional protection.
   a. Prior to the land clearing stage of development, the owner, developer, or agent must erect protective barriers which as a minimum are made of one-inch by one-inch lumber or approved alternative barricading material.
   b. For all other protected vegetation in required open spaces (see § 10-415), including shrubs and ground cover, barricades must be erected around the perimeter of the vegetation.
   c. The owner, developer, or agent may not cause or permit the movement of equipment or the storage of equipment, material, debris, or fill to be placed within the required protective barrier.
   d. The protected trees and associated understory plant communities must remain alive and healthy at the end of the construction in order for this credit to apply.

Sec. 10-421. Plant installation and maintenance standards.

(a) ***General design criteria for plantings.*** Plant materials must be installed in soil conditions that are conducive to their proper growth.
(1) Limerock located within planting areas must be removed and replaced with native or growing quality soil before planting.
(2) Plants' growth habits must be considered in advance of conflicts that might be created (e.g., views, signage, overhead power lines, lighting, circulation, sidewalks, buildings, etc.).
(3) Trees may not be placed where they interfere with site drainage, subsurface utilities, or overhead utility lines, or where they will require frequent pruning in order to avoid interference with overhead power lines.

(b) ***Installation of plant materials***. All landscape materials must be installed in a recognized horticulturally correct manner. At a minimum, the following installation requirements must be met:
(1) All landscaped areas must be mulched unless vegetative cover is already established.
(2) Trees and shrubs used in buffers must be planted in a minimum width area equal to one-half the required width of the buffer. However, in no case may the planting area be less than 5 feet in width.
(3) All landscaped areas must be provided protection from encroachment by any type of vehicle.
(4) All required plants used in buffers and landscaping must be installed using xeriscape principles. Xeriscape principles include water conservation through drought-tolerant landscaping, the use of appropriate plant material, mulching, and the reduction of turf areas.
(5) Utility or drainage easements may overlap required buffers; however, no buffer trees or shrubs may be located in any utility, drainage, or street easement or right-of-way. To avoid conflicts with overhead utility lines, only trees reaching less than 20 feet in height at maturity may be used directly adjacent to an overhead line. Variances and deviations from the requirements of this subsection are prohibited, except when included in an approved Alternate Landscape Betterment Plan.

(6) *Safe sight distances at intersections.* Minimum safe sight distances must be maintained in accordance with the visibility requirements set forth in § 34-3131.

(c) ***Maintenance of landscaping.*** The owner is responsible for maintaining the required landscaping in a healthy, vigorous condition at all times. Tree and palm staking must be removed within 12 months after installation. All landscaping must be kept free of refuse, debris, disease, pests, and weeds. Ongoing maintenance to prohibit the establishment of prohibited invasive exotic species is required.

(d) ***Pruning.*** Vegetation required by this code may only be pruned to promote healthy, uniform, natural growth of the vegetation (except where necessary to promote public health, safety, or welfare). Pruning must be in accordance with "*Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning)* (ANSI A300, Part 1)" by the American National Standards Institute and "*Best Management Practices: Tree Pruning*" by the International Society of Arboriculture (ISA). Trees must not be severely pruned to permanently maintain growth at a reduced height or spread. Pruning must not interfere with the design intent of the original installation. Severely pruned trees must be replaced by the property owner; replacement trees must meet the tree size requirements in § 10-420. A plant's growth habit must be considered in advance of conflicts which might arise (i.e. views, signage, overhead power lines, lighting, circulation, sidewalks, buildings, and similar conflicts).

Sec. 10-422. Landscape certificate of compliance.

The landscape designer must inspect and certify that all landscaping and the irrigation system are in substantial compliance with the landscape and irrigation plans approved as part of the development order. An "as-built" landscape plan highlighting any changes to the approved plans must be included with the certification. Any changes to an "alternative landscape betterment plan" must be approved by minor change to the development order. The general certificate of compliance procedure outlined in § 10-183 is applicable.

Sec. 10-423. Restoration standards for indigenous plant communities removed without approval.

A restoration plan based on the minimum standards set out in this division will be required if indigenous plant communities have been removed without permit or approval. Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at no less than 3 feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. All other restoration criteria as set forth in ch. 14, article V, pertaining to tree protection, will also apply. Restoration plantings for native trees must be in compliance with the standards set forth in ch. 14, article V.

Secs. 10-424--10-440. Reserved.

DIVISION 7. PUBLIC TRANSIT

Sec. 10-441. Applicability of division.

Except as provided in § 10-443, all proposed developments which meet the threshold set forth in this division shall be required to provide public transit facilities as set out in this division.

Sec. 10-442. Required facilities.

Residential developments exceeding 100 living units and commercial establishments exceeding 10,000 square feet of total floor area or 50 hotel/motel rooms shall be subject to the following:

(1) A paved walkway to the nearest bus stop shall be provided if the bus stop is within one-fourth mile of the vehicular entrance to the property.
(2) If there is no bus stop within one-fourth mile of the property and the property abuts the bus route, the developer shall provide signage and a bicycle rack for a new bus stop.

Sec. 10-443. Exceptions.

(a) This division shall not be interpreted to mean that a developer is required to purchase additional private property for the purpose of constructing the walkway required by this division.

(b) The director may waive the requirements of § 10-442 where a developer has provided bikeways or pedestrian ways and those facilities provide equivalent access to the nearest bus stop.

Secs. 10-444--10-470. Reserved.

DIVISION 8. PROTECTION OF HABITAT [4]

Sec. 10-471. Purpose of division.

The purpose of this division is to provide criteria, guidelines, and requirements to protect listed animal and plant species which inhabit the town by safeguarding the habitat in which these species are found from the impacts associated with land development.

Sec. 10-472. Definitions.

The following supplemental definitions are unique to the protected species requirements of this chapter. The general definitions pertaining to this chapter are contained in § 10-1.

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 the activities described in F.S. § 704.06, as such provisions now exist or may be amended.

Degrade means to be cause of any adverse or negative modification (from the perspective of the subject species) of the hydrological, biological, or climatic characteristics supporting the species or of plants and animals co-occurring with and significantly affecting the ecology of the species.

FLUCCS means the Florida Land Use, Cover and Forms Classification System, published by the state department of transportation.

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

Habitat means the place or type of site where a species naturally or normally nests, feeds, resides, or migrates, including, for example, characteristic topography, soils, and vegetative covering.

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[4] ***Cross reference(s)***–*Sea turtle conservation, § 14-71 et seq.; southern bald eagle protection, § 14-111 et seq.; zoning regulations pertaining to environmentally sensitive areas, § 34-1571 et seq.*

Habitat, critical means habitat which, if lost, would result in elimination of listed species individuals from the area in question. Critical habitat typically provides functions for the listed species during restricted portions of that species' life cycle.

Habitat, occupied means property that provides critical habitat and which is documented to be actively utilized by a listed species.

Habitat, significantly altered means critical or occupied habitat which has been altered due to natural or man-made events.

Listed species means any plant or animal (vertebrate) species found in the town that are endangered, threatened, of special concern, rare, imperiled, or critically imperiled and which are manageable in the context of private land development. A list of such species is contained in Table 10-10. The bald eagle (Haliaeetus leucocephalus) is excluded as long as ch. 14, article III, relating to bald eagle nesting habitat, is in effect. Sea turtles are also excluded as long as ch. 14, article II, relating to sea turtle nesting habitat, is in effect.

Management means a series of techniques applied to maintain the viability of species in a location. These techniques include but are not limited to controlled burning, planting, or removal of vegetation, exotic species control, maintaining hydrologic regimes, and monitoring.

Management plan means a plan prepared to address conservation and management of listed species and their habitat, which is approved by the director, following recommendations from the FWC.

Occupied habitat buffer area means occupied habitat, the dimensions of which coincide with the recommended buffer guidelines established in Table 10-10 and § 10-474(b).

Property means the land which is the subject of the specific development application.

Cross reference(s)*--Definitions and rules of construction generally, § 1-2; definitions, § 10-1.*

Sec. 10-473. Development application requirements.

(a) A survey must accompany all planned development rezoning applications and all development order applications where the Florida Land Use, Cover and Forms Classification System codes for the property indicate a possible presence of a listed species, except as set forth in subsection (c) of this section. The survey must be prepared by using survey methods which are set forth in Lee County's administrative code, except that an alternative method may be approved by the director. Such survey must include listed species' presence (sightings, signs, tracks, trails, nests, evidence of feeding, etc.), population estimates, and occupied habitat boundaries. A map and narrative must describe the methodology as applied and the findings. The mapped information must be at the same scale as the development order or zoning application plans and an aerial map at a scale of one inch is less than or equal to 400 feet. Approved species surveys are valid for 5 years from the date of approval. If the subject parcel has significantly altered habitat, the director may, in his discretion, determine a partial or complete resurvey is sufficient.

(b) A management plan may be submitted with any planned development rezoning applications. A management plan meeting the requirements of § 10-474 will be required for all development order applications if listed species are found on the property. The management plan is subject to final approval by the director.

(c) Surveys and management plans are not required for developments on less than one acre of land.

(d) For development order applications, submittal items that are common to both the species survey and the management plan can be provided in a single integrated report.

Sec. 10-474. Management plan.

(a) ***Components of plan.*** The management plan required under this division shall include:

(1) A 1 inch equals 200 feet aerial map and a map at the scale of the development order drawings or zoning site plan drawing to include the following:

a. Habitat classification depicted by using the Florida Land Use, Cover and Forms Classification System;
b. Location of individuals, nest sites, dens, burrows, feeding locations, roosting and perching areas, and trails, as appropriate;
c. Areas to be preserved, including habitat and buffers;

(2) Recommended management activities; and
(3) An action plan with specific implementation activities, schedules, and assignment of responsibilities.

(b) ***Occupied habitat buffer areas established.*** Occupied habitat buffer areas must be established for occupied habitat and must extend at a distance appropriate for the listed species as set forth in Table 10-10 except where off-site mitigation is permitted accordance with § 10-475. In the event the FWC has already established the size and dimensions of an occupied habitat buffer area, those boundaries will supersede the distances shown in Table 10-10.

(c) ***Development and occupied habitat buffer areas.*** The occupied habitat buffer area must remain free of development, except for development which will not degrade species existing on the site as determined by the director. Occupied habitat buffer areas may be impacted by development if off-site mitigation is utilized in accordance with § 10-475. These buffer areas must be identified on all associated applications and plats where applicable. Buffer areas may not be divided by lot lines unless the director determines that the division of these buffer areas by lot lines is consistent with the protected species management plan. A conservation easement or similar property interest must be granted to the town for the preserved property as a condition of the development order approval or final plat approval, unless the director determines it would not be logistically or economically feasible for the town to maintain the easement. Encroachments into occupied habitat and habitat buffer are permissible only after the incentives set forth in subsection (e) of this section have been exhausted or off-site mitigation is permitted in accordance with § 10-475.

(d) ***Conservation easements.*** If adjacent parcels include conservation easements or other public interest in the land, effort shall be made to connect the easements.

(e) ***Incentives***. The town will allow certain incentives in return for the preservation of occupied habitat areas. This incentive system will only apply to those areas to which other incentives have not been utilized and which are not preserved under ch. 14, article IV, pertaining to wetlands protection. Occupied habitat buffer area incentives are as follows:

(1) Developments will be exempt from division 6 of this article, so long as the applicant preserves occupied habitat buffer areas consisting of no less than 10 percent of the development area.
(2) To the extent that occupied habitat buffer areas exceed 10 percent of the development area, the town must either allow encroachment into the occupied habitat or permit a credit against regional park impact fees. The credit against the impact fees may not exceed the appraised value of the preserved land. The appraisal must be based on the value of the property prior to the issuance of the development order that includes the occupied habitat buffer area and on the average of the two appraisals approved by the director. The credit will be approved upon the grant of the conservation easement.

(f) ***Consideration of FWC guidelines for listed species.*** In cases where guidelines have been prepared by the FWC for a listed species, those guidelines must be considered in the preparation of the management plan.

(g) ***When determination made without FWC expertise.*** If the FWC fails to review any plan in conjunction with regular review schedules, determinations will be made without the benefit of FWC expertise.

(h) ***Responsibility for implementation of management plan; monitoring report review.*** The applicant or his successor in interest is responsible for all aspects of the implementation of the management plan. A monitoring report as to the condition of the habitat and management techniques applied to the habitat must be submitted to the director for review on an annual basis from the date that the development order is issued for 5 consecutive years.

(i) ***Management plan finalization.*** The management plan must be finalized prior to issuance of the development order.

Sec. 10-475. Off-site mitigation.

(a) Off-site mitigation is permitted in lieu of the preservation of occupied habitat buffer areas as required in § 10-474 above to the extent consistent with the requirements of the U.S. Fish and Wildlife Service and the FWC.

(b) Before development order approval, the applicant must obtain and submit appropriate permits for off-site mitigation.

(c) A permanent management commitment for the relocation recipient site which is compatible with long-term protected species viability must be ensured by either filing conservation easements for sites under F.S. § 704.06 or other formal commitments enforceable by the town.

Secs. 10-476--10-600. Reserved.

TABLE 10-10. LISTED SPECIES							
Scientific Name	***Common Name***	***FLUCCS***	***Month Beginning***	***Month Ending***	***Rec. Buffer Guide-lines (ft)***	***Buffer For***	***Aspects to be Included in Survey***
REPTILES							
Alligator mississipiensis	**American alligator**	500 series, 610, 621, 630, 641, 653			500	Nest	Nests, sunning areas
Caretta caretta	**Loggerhead turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Chelonia mydas	**Green turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Crocodylus acutus	**American crocodile**	642, 651			500	Nests	Nests, sunning areas
Dermochelys coriacea	**Leatherback turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Drymarchon corais couperi	**Eastern indigo snake**	320 series, 411, 412, 414, 421, 425, 426, 427, 428			150	Gopher tortoise burrows	Burrows, feeding
Eretmochelys imbricata	**Hawksbill turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Gopherus polyphemus	**Gopher tortoise**	320 series, 411, *412, 421, 426, 427, 432, 743			150	Burrows	Burrows, feeding
Lepidochelys kempii	**Kemp's ridley turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Malaclemys terrapin	**Diamondback terrapin**	612, 640, 651, 652, 710			150	Nests	Nest, sunning areas
Rana areolata	**Gopher frog**	320 series, 411, 412, 421, 426, 560, 620, 630			150	Gopher tortoise burrows	Burrows, feeding paths to wetlands
BIRDS							
Ajaia ajaja	**Roseate spoonbill**	500 series, 612, 642, 652, 653, 654			250	Feeding	Feeding
Charadrius alexandrinus tenitrostris	**Southeastern snowy plover**	651, 652, 710			250	Nests	Nests, feeding
Charadrius melodus	**Piping plover**	651, 652, 710	Dec.	May	250	Nests	Nest, feeding
Egretta caerulea	**Little blue heron**	500 series, 600 series			250	Nests	Nests, feeding
Egretta rufescens	**Reddish egret**	500 series, 610, 640, 650			250	Nests	Nests, feeding
Egretta thula	**Snowy egret**	500 series, 600 series			250	Nests	Nests, feeding
Egretta tricolor	**Tricolored heron**	500 series, 600 series			250	Nests	Nests, feeding
Eudocimus albus	**White ibis**	650, 651, 652			250	Nests	Nests, feeding

TABLE 10-10. LISTED SPECIES							
Scientific Name	***Common Name***	***FLUCCS***	***Month Beginning***	***Month Ending***	***Rec. Buffer Guide-lines (ft)***	***Buffer For***	***Aspects to be Included in Survey***
Falco peregrinus tundrius	**Arctic peregrine falcon**	620, 650	Sept.	April	150	Feeding	Feeding
Falco sparverius paulus	**Southeastern American kestrel**	321, 411, 435	March	July	500	Nests	Nests, feeding
Haematopus palliatus	**American oystercatcher**	651, 652, 654, 710			250	Nests	Nests, feeding
Haliaeetus leucocephalus	**Bald eagle**	*- for bald eagles, the special regulations in §§14-111 through 14-290 supersede the provisions of ch. 10, division 8 -*					
Mycteria americana	**Wood stork**	560, 610, 621, 630, 640, 650			500	Nests	Nests, feeding
Pelecanus occidentalis	**Brown pelican**	612, 650			250	Nests	Nests
Rynchops niger	**Black skimmer**	191, 261, 650, 651, 652			250	Nests	Nests, feeding
Sterna antillarum	**Least tern**	191, 261, 651, 652	April	Sept.	250	Nests	Nests, feeding
Sterna douballii	**Roseate tern**	651, 652, 710	Jan.	April	250	Feeding	Feeding
PLANTS							
Acanthocereus tetragonus	**Barbwire cactus; Dildoe cactus**	322, 426, 743			10	Plant	Sighting
Acrostichum aureum	**Golden leather fern**	612, 641, 642			10	Plant	Sighting
Amaranthus floridanus	**Florida amaranth**	322, 710, 740			10	Plant	Sighting
Celosia nitida	**West Indian cock's comb**	426, 743			10	Plant	Sighting
Celtis iguanaea	**Iguana hackberry**	322, 426			10	Plant	Sighting
Celtis pallida	**Spiny hackberry; Desert hackberry**	322, 426			10	Plant	Sighting
Harrisia aboriginum	**Prickly applecactus; West coast prickly-apple**	322, 426, 612, 743			10	Plant	Sighting
Chrysophyllum olivaeforme	**Satinleaf**	411, 426			10	Plant	Sighting
Encyclia tampensis	**Florida butterfly orchid**	322, 426, 427, 428, 612			10	Plant	Sighting

TABLE 10-10. LISTED SPECIES							
Scientific Name	***Common Name***	***FLUCCS***	***Month Beginning***	***Month Ending***	***Rec. Buffer Guide-lines (ft)***	***Buffer For***	***Aspects to be Included in Survey***
Eragrostis tracyi	**Sanibel love grass**	710			10	Plant	Sighting
Gossypium hirsutum	**Wild cotton**	611			10	Plant	Sighting
Gymnopogon brevifolius	**Shortleaf skeleton grass**	426, 427, 428			10	Plant	Sighting
Helianthus debilis subsp. vestitus	**West coast dune sunflower**	322, 710			10	Plant	Sighting
Jacquina keyensis	**Joewood**	322, 426			10	Plant	Sighting
Maytenus phyllanthoides	**Florida mayten**	322, 612, 743			10	Plant	Sighting
Myrcianthes fragrans	**Twinberry; Simpson's stopper**	426, 427, 428			10	Plant	Sighting
Opuntia stricta	**Erect pricklypear**	322, 426, 612, 710, 743			10	Plant	Sighting
Paspalidium chapmanii	**Coral panicum**	322, 743			10	Plant	Sighting
Rayjacksonia phyllocephala	**Camphor daisy**	612, 642			10	Plant	Sighting
Scaevola plumieri	**Inkberry; Beachberry; Gullfeed**	322, 710			10	Plant	Sighting
Stenaria nigricans; Heydotis nigricans	**Diamond flowers**	322, 740			10	Plant	Sighting
Suriana maritima	**Bay cedar**	322, 741, 743			10	Plant	Sighting
Tillandsia balbisiana	**Reflexed wild-pine; Northern needleleaf**	322, 426, 427, 428, 612			10	Plant	Sighting
Tillandsia fasciculata var. densispica	**Stiff-leaved wild-pine; Cardinal air plant**	322, 426, 427, 428, 612			10	Plant	Sighting
Tillandsia flexuosa	**Banded wild-pine; Twisted air plant**	322, 426, 612			10	Plant	Sighting
Tillandsia utriculata	**Giant wild-pine; Giant airplant**	322, 426, 427, 428, 612			10	Plant	Sighting
Zamia floridana, Zamia integrifolia	**Florida coontie; Florida arrowroot**	320 series, 411, 412, 421, 426			10	Plant	Sighting

**Mesic and xeric 411 only.*

ARTICLE IV. STORMWATER DISCHARGES AND EROSION CONTROL (NPDES REQUIREMENTS)

Sec. 10-601. Purpose and intent.

(a) The purpose of this article is to provide clear guidance and regulations with respect to discharges into Municipal Separate Storm Sewer Systems (MS4). In order to comply with the requirements of the town's National Pollutant Discharge Elimination System (NPDES) permit, the town must establish regulations that will prohibit illicit discharges into the MS4 and provide sufficient means to monitor and enforce local discharge regulations.

(b) It is the intent of this article to prohibit any illicit, inappropriate, or harmful discharges into the MS4 or waters of Lee County or the Town of Fort Myers Beach.

Sec. 10-602. Applicability.

This article applies to the incorporated area of the Town of Fort Myers Beach.

Sec. 10-603. Prohibitions.

Illicit stormwater and non-stormwater discharges into the MS4 are prohibited. Unless otherwise permitted, there are no discharges allowed to MS4 except uncontaminated stormwater runoff or one of the exemptions as listed in § 10-604.

Sec. 10-604. Exemptions.

The following discharges into the MS4 are specifically exempt from compliance with this article:

(1) Waterline flushing.
(2) Landscape irrigation.
(3) Rising groundwaters, floodwaters, and other discharges associated with county- or town-declared emergencies.
(4) Uncontaminated groundwater infiltration (as defined in 40 CFR § 35.2005(20)) to separate storm sewers.
(5) Uncontaminated pumped groundwater.
(6) Discharges from potable water sources.
(7) Fountain drains.
(8) Air conditioning condensate.
(9) Irrigation water.
(10) Water from crawl space pumps.
(11) Footing drains.
(12) Lawn watering.
(13) Individual residential car washing.
(14) Flows from riparian habitats and wetlands.
(15) Dechlorinated swimming pool discharge.
(16) Street wash waters.
(17) Discharges or flows from emergency fire fighting activities.

Sec. 10-605. Definitions.

Best management practices (BMPs) means methods and practices used to control and manage stormwater runoff that have been determined most appropriate by state and federal agencies such as Florida Department of Environmental Protection and United States Environmental Protection Agency.

Construction site means physical real property, with or without structures, where the land surface has been or will be disturbed to accommodate development or redevelopment, as defined in this section.

Development means an improvement to land, as that phrase is defined in § 10-1. Redevelopment is a form of development.

Discharge means any material, solid or liquid, that is conveyed, placed, or otherwise enters the municipal separate storm sewer system. It includes, without qualification, the discharge of pollutants.

Illicit discharge or illicit stormwater discharge means any discharge into the Town of Fort Myers Beach or Lee County MS4 that is not composed entirely of uncontaminated stormwater, except discharges made in accordance with a county- or town-issued development order, an independent NPDES permit, as a result of fire fighting activities, or as otherwise specifically exempted under this article.

MS4 means any Town of Fort Myers Beach or Lee County Municipal Separate Storm Sewer System. Such systems collect and/or convey stormwater and may include roads with drainage

systems, storm drains, catch basins, curbs, gutters, ditches, and man-made channels.

NPDES means National Pollutant Discharge Elimination System. The Town of Fort Myers Beach is a co-permittee with Lee county under NPDES permit FLS000035.

Street wash water means any runoff from the washing of streets, culverts, or other MS4 facilities operated and maintained by the Town of Fort Myers Beach or Lee County.

Stormwater discharge means the discharge from any conveyance used for collecting and conveying stormwater.

Stormwater Pollution Prevention Plan (SWP3) means a document as defined in 40 CFR 122.26 prepared by a professional engineer registered in the State of Florida (construction site SWP3s must also be prepared in accordance with DEP Document No. 62-621) outlining the means and methods of managing stormwater onsite using BMPs.

Uncontaminated stormwater runoff means sheet flow from natural land and stormwater discharges from urbanized land, where this stormwater does not contain a harmful quantity of any substance and where it meets water quality criteria.

Water quality criteria mean minimum water quality standards as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C.

Cross reference(s)*--Definitions and rules of construction generally, § 1-2; definitions, § 10-1.*

Sec. 10-606. Construction sites.

Development approvals, including development orders and building permits, must address stormwater quality issues, including runoff from construction sites. The following regulations apply to any construction activity including clearing, grading, and excavation activities that disturbs *one acre or more* of total land area. These regulations also apply to the same activities that disturb *less than one acre* of total land area if the construction site is part of a larger common plan of development that obtained approval after October 1, 1992, and was required to obtain an NPDES permit.

(1) Submit an SWP3 for construction meeting the criteria set forth in § 10-607, prior to development order approval. If a development order is not required, then the SWP3 must be submitted prior to building (or vegetation removal) permit issuance. At the discretion of the director, an affidavit or certification from a Florida licensed professional engineer may be submitted, prior to start of construction activity, attesting that the SWP3 for construction has been prepared in accordance with § 10-607 and will be on-site and available for review during all phases of construction;
(2) Maintain a copy of the SWP3 on-site at all times for review by the director; and
(3) File a notice of intent (NOI) with FDEP in Tallahassee in accordance with the direction of DEP Document No. 62-621 and with the director at least 48 hours prior to start of construction.

Sec. 10-607. Stormwater pollution prevention plan (SWP3) criteria.

For purposes of this article, all SWP3s must:
(1) Comply with the requirements of 40 CFR 122.26;
(2) Use best management practices for sediment and erosion control as outlined in the Virginia Erosion Sediment Control Manual, the Manual for Erosion Control and Sediment Control in Georgia, the Florida Land Development Manual, or a similar quality guidance manual;
(3) Be prepared by a Florida licensed professional engineer in accordance with DEP Document No. 62-621; and
(4) Remain on-site and be available for review during all phases of construction and, if required, during ongoing operations activity.

Sec. 10-608. Enforcement.

(a) ***Responsibility.*** The director and the town's code enforcement personnel are responsible for coordinating the enforcement of this article with assistance from Lee County's Natural Resources Division, South Florida Water Management District (SFWMD), Environmental Protection Agency (EPA), and Florida Department of Environmental Protection (FDEP). In order to facilitate enforcement, Natural Resources Division staff are granted full authority to act as code inspectors or code enforcement officers for the town, as those

terms are defined in §§ 2-423 and 2-430 of this code.

(b) ***Procedures.*** Any violation of this article may result in prosecution by any of the methods or procedures set forth below, or by any combination of these procedures. The choice of procedure rests within the reasonable discretion of the director, based upon the nature of the violation, the number of previous violations, and the magnitude of the violation and its threat to the public health, safety, and welfare.

(1) ***Routine code enforcement.*** Any violation of this article may be prosecuted in accordance with the provisions found in ch. 2, article V.

(2) ***Administrative shut down.***

a. If Natural Resources Division staff documents competent proof that the discharge from a specific activity does not meet minimum water quality criteria as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C., or site-specific permit levels, staff will notify the owner/operator in writing and provide no more than 14 days to return the site to minimum discharge standards or be ordered to shut down.

b. If the owner/operator fails to remedy the substandard discharge violation, the director may order the facility to shut down. The director's order must be in writing and set forth the basis for the decision to shut the facility down. A copy of the order will be provided to the owner/operator by hand delivery, certified mail, or any other legal means of delivery.

c. Once the facility is shut down, it cannot reopen without the prior written approval of the director. Approval is appropriate only where the owner/operator can demonstrate by substantial competent proof that the operation will meet minimum water quality standards or site-specific permit levels.

d. Appeal of an administrative shut down decision may be obtained only by filing a Petition for Writ of Certiorari with the circuit court.

(3) ***Emergency shut down.*** The director may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the State of the Florida or the United States. If the violator fails to comply with a suspension order issued in an emergency, the town may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of Florida or the United States, or to minimize danger to persons.

(4) ***Referral to appropriate state or federal agency.*** The county may coordinate enforcement of this article with SFWMD, EPA, and FDEP in accordance with applicable county, state, and federal regulations. Pursuit of a remedy allowed under town regulations does not prevent the state or federal agency from pursuing additional action against a violator.

(5) ***Other remedies.*** The town may exercise its discretion to pursue alternative courses of action, including the provisions of § 1-5 or injunctions or other civil remedies, when deemed appropriate by the director.