

ORDINANCE No. 04-01

AN ORDINANCE AMENDING THE DEVELOPMENT STANDARDS CHAPTER (CHAPTER 10) OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; REPEALING CHAPTER 10 “DEVELOPMENT STANDARDS” OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; REPEALING APPENDIX H OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; ADOPTING A NEW CHAPTER 10 OF THE LAND DEVELOPMENT CODE ENTITLED “DEVELOPMENT ORDERS AND ENGINEERING STANDARDS” WHICH PROVIDES ARTICLE I IN GENERAL; ARTICLE II DEVELOPMENT ORDERS AND PLATS, DIVISION 1 GENERALLY, DIVISION 2 DEVELOPMENT ORDERS, DIVISION 3 LIMITED REVIEW PROCESS, DIVISION 4 INSPECTIONS AND CERTIFICATE OF COMPLIANCE, DIVISION 5 PLATS; ARTICLE III ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS, DIVISION 1 GENERALLY, DIVISION 2 TRANSPORTATION, ROADWAYS, STREETS, AND SIDEWALKS, DIVISION 3 SURFACE WATER MANAGEMENT, DIVISION 4 UTILITIES, DIVISION 5 FIRE SAFETY, DIVISION 6 OPEN SPACE, BUFFERING, AND LANDSCAPING, DIVISION 7 PUBLIC TRANSIT, DIVISION 8 PROTECTION OF HABITAT; ARTICLE IV STORMWATER DISCHARGES AND EROSION CONTROL (NPDES REQUIREMENTS); PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

**SECTION 2. REPEAL OF CHAPTER 10 “DEVELOPMENT STANDARDS” OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS.** By the authority of Section 15.08 (c) of the Town Charter, Chapters 10 of the transitional land development regulations are hereby repealed. Transitional Chapter 10 is entitled DEVELOPMENT STANDARDS and contains the following articles: Article I In General, Article II Administration, Article III Design Standards and Requirements, Article IV Illustrations, Tables, and Diagrams.

**SECTION 3. REPEAL OF APPENDIX H OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS.** By the authority of Section 15.08 (c) of the Town Charter, APPENDIX H of the transitional land development regulations is hereby repealed. Transitional Appendix H was adopted by Fort Myers Beach Ordinance 96-20 as the Protected Species List.

**SECTION 4. ADOPTION OF NEW CHAPTER 10 OF THE LAND DEVELOPMENT CODE.** The new Chapter 10 of the Town of Fort Myers Beach land development code entitled “DEVELOPMENT ORDERS AND ENGINEERING STANDARDS” shall be as contained in the attached Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the transitional land development regulations is indicated with strike-throughs. Language being readopted by this ordinance is neither underlined nor struck through. The new Chapter 10 contains the following articles, divisions, subdivisions, and sections:

## **ARTICLE I. IN GENERAL**

- Sec. 10-1. Definitions and rules of construction.
- Sec. 10-2. Purpose of chapter.
- Sec. 10-3. Interpretation of chapter.
- Sec. 10-6. Enforcement of chapter; penalty.
- Sec. 10-7. General requirements.
- Sec. 10-8. Design goals.
- Sec. 10-9. Specific requirements.

## **ARTICLE II. DEVELOPMENT ORDERS AND PLATS**

### **Division 1. Generally**

### **Division 2. Development Orders**

#### Subdivision I. In General

#### Subdivision II. Procedures

- Sec. 10-101. Applicability of requirements.
- Sec. 10-102. Employment of engineers and design consultants.
- Sec. 10-103. Prior zoning approvals for development order submittals.
- Sec. 10-104. Deviations and variances.
- Sec. 10-105. Preapplication meeting.
- Sec. 10-106. Revocation of existing development orders on granting of new development order.
- Sec. 10-107. Initiation of application; designation of representative.
- Sec. 10-108. Application procedure.
- Sec. 10-108.1 Payment of taxes.
- Sec. 10-109. Review procedure; action by director.
- Sec. 10-110. Resubmittal of application following denial.
- Sec. 10-111. Issuance of order; approval letter and stamping of drawings.
- Sec. 10-112. Appeals.
- Sec. 10-113. Recording of notice of development order.
- Sec. 10-114. Contents of development order.
- Sec. 10-115. Duration of development order.
- Sec. 10-116. Effect of approval of development order.
- Sec. 10-117. Phased projects.
- Sec. 10-118. Amendments generally.
- Sec. 10-119. Amendment to correct error or omission.
- Sec. 10-120. Minor changes.
- Sec. 10-121. Transfer.
- Sec. 10-122. Violation of development order.
- Sec. 10-123. Extensions.
- Sec. 10-124. Coordination of review.

#### Subdivision III. Submittals

- Sec. 10-151. Generally.
- Sec. 10-152. Requirement waiver.
- Sec. 10-153. Application form and contents.
- Sec. 10-154. Additional required submittals.

### **Division 3. Limited Review Process**

- Sec. 10-171. Generally.
- Sec. 10-172. Legal effect of approval
- Sec. 10-173. General requirements for limited review process.
- Sec. 10-174. Types of development entitled to limited review.
- Sec. 10-175. Required submittals.
- Sec. 10-176. Appeals.

### **Division 4. Inspections and Certificate of Compliance**

- Sec. 10-181. Inspection of improvements generally.
- Sec. 10-182. Inspection of work during construction.
- Sec. 10-183. Final inspection and certificate of compliance.

### **Division 5. Plats**

- Sec. 10-211. Required.
- Sec. 10-212. Preparation and submission.
- Sec. 10-213. Technical requirements.
- Sec. 10-214. Contents.
- Sec. 10-215. Waiver of requirements.
- Sec. 10-216. Monuments.
- Sec. 10-217. Lot recombinations.
- Sec. 10-218. Noncompliance of individual lots.

## **ARTICLE III. ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS**

### **Division 1. Generally**

- Sec. 10-251. Applicability.
- Sec. 10-252. General design standards.
- Sec. 10-253. Consideration of flood hazards.
- Sec. 10-254. Street names.
- Sec. 10-255. Placement of structures in easements.
- Sec. 10-256. Off-street parking and loading requirements.
- Sec. 10-257. Refuse disposal facilities.

### **Division 2. Transportation, Roadways, Streets, and Sidewalks**

- Sec. 10-285. Connection separation.
- Sec. 10-286. Traffic impact statements.
- Sec. 10-287. Traffic impact mitigation plan.
- Sec. 10-288. Turn lanes.
- Sec. 10-289. Sidewalks.
- Sec. 10-290. Local streets.
- Sec. 10-291. Access to street required.
- Sec. 10-292. Public streets to connect to existing public street.
- Sec. 10-293. Private streets.
- Sec. 10-294. Continuation of existing street pattern.
- Sec. 10-295. Street stubs to adjoining property.
- Sec. 10-296. Street design and construction standards.

### **Division 3. Surface Water Management**

- Sec. 10-321. Generally.
- Sec. 10-322. Roadside swales.
- Sec. 10-323. Rear lot line swales and ditches.
- Sec. 10-324. Open channels and outfall ditches.
- Sec. 10-325. Reserved.

- Sec. 10-326. Inlet spacing.
- Sec. 10-327. Dedication of drainage system; maintenance covenant.
- Sec. 10-329. Excavations.

**Division 4. Utilities**

- Sec. 10-351. Generally.
- Sec. 10-352. Connection to potable water system.
- Sec. 10-353. Connection to sanitary sewer system.
- Sec. 10-354. Connection to reuse water system.
- Sec. 10-355. Easements; location of water and sewer lines.
- Sec. 10-357. Inspection of water and sewer systems; piping materials.

**Division 5. Fire Safety**

- Sec. 10-381. Generally.
- Sec. 10-383. Variances.
- Sec. 10-384. Minimum standards for all developments.
- Sec. 10-385. Design standards.

**Division 6. Open Space, Buffering, and Landscaping**

- Sec. 10-412. Definitions.
- Sec. 10-413. Major indigenous plant communities of the town.
- Sec. 10-414. Landscape and irrigation submittals.
- Sec. 10-415. Open space .
- Sec. 10-416. Landscaping standards.
- Sec. 10-417. Irrigation standards.
- Sec. 10-419. Alternate landscape betterment plans.
- Sec. 10-420. Plant material standards.
- Sec. 10-421. Plant installation and maintenance standards.
- Sec. 10-422. Landscape certificate of compliance.
- Sec. 10-423. Restoration standards for native vegetation removed without approval.

**Division 7. Public Transit**

- Sec. 10-441. Applicability of division.
- Sec. 10-442. Required facilities.
- Sec. 10-443. Exceptions.

**Division 8. Protection of Habitat**

- Sec. 10-471. Purpose of division.
- Sec. 10-472. Definitions.
- Sec. 10-473. Development application requirements.
- Sec. 10-474. Management plan.
- Sec. 10-475. Off-site mitigation.

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

- Sec. 10-601. Purpose and intent.
- Sec. 10-602. Applicability.
- Sec. 10-603. Prohibitions.
- Sec. 10-604. Exemptions.
- Sec. 10-605. Definitions.
- Sec. 10-606. Construction sites.
- Sec. 10-607. Stormwater pollution prevention plan (SWP3) criteria.
- Sec. 10-608. Enforcement.

**SECTION 5. SEVERABILITY.** If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its adoption.

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

Howard Rynearson	AYE
Daniel Hughes	AYE
Bill Thomas	AYE
W. H. "Bill" Van Duzer	AYE
Terry Cain	AYE

DULY PASSED AND ENACTED this 5<sup>th</sup> day of January, 2004.

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Marsha Segal-George, Town Clerk

By: \_\_\_\_\_  
Daniel Hughes, Mayor

Approved as to form by:

\_\_\_\_\_  
Richard V.S. Roosa, Town Attorney

# EXHIBIT A

## FORT MYERS BEACH LAND DEVELOPMENT CODE

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### CHAPTER 10 DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

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#### ARTICLE I. IN GENERAL

- Sec. 10-1. Definitions and rules of construction.*  
*Sec. 10-2. Purpose of chapter.*  
*Sec. 10-3. Interpretation of chapter.*  
*Sec. 10-4. ~~Reserved. Conflicting provisions.~~*  
*Sec. 10-5. ~~Reserved. Effective date; repealer; applications in process and existing development orders~~*  
*Sec. 10-6. Enforcement of chapter; penalty.*  
*Sec. 10-7. General requirements.*  
*Sec. 10-8. ~~Design goals. Specific requirements.~~*  
*Sec. 10-9. ~~Specific requirements.~~*  
*Secs. 10-~~109~~--10-50. Reserved.*

#### ARTICLE II. ADMINISTRATION 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.*  
*Sec. 10-102. Employment of engineers and design consultants.*  
*Sec. 10-103. ~~Prior Prerequisite~~ zoning approvals for development order submittals.*  
*Sec. 10-104. Deviations and variances.*  
*Sec. 10-105. Preapplication meeting.*  
*Sec. 10-106. Revocation of existing development orders on granting of new development order.*  
*Sec. 10-107. Initiation of application; designation of representative.*  
*Sec. 10-108. Application procedure.*  
*Sec. 10-108.1 Payment of taxes.*

- Sec. 10-109. Review procedure; action by director of development review.*  
*Sec. 10-110. Resubmittal of application following denial.*  
*Sec. 10-111. Issuance of order; approval letter and stamping of drawings.*  
*Sec. 10-112. Appeals.*  
*Sec. 10-113. Recording of notice of development order.*  
*Sec. 10-114. Contents of development order.*  
*Sec. 10-115. Duration of development order.*  
*Sec. 10-116. Effect of approval of development order.*  
*Sec. 10-117. Phased projects.*  
*Sec. 10-118. Amendments generally.*  
*Sec. 10-119. Amendment to correct error or omission.*  
*Sec. 10-120. Minor changes.*  
*Sec. 10-121. Transfer.*  
*Sec. 10-122. Violation of development order.*  
*Sec. 10-123. Extensions.*  
*Sec. 10-124. Coordination of review between county departments.*  
*Secs. 10-125--10-150. Reserved.*  
**Subdivision III. Submittals**  
*Sec. 10-151. Generally.*  
*Sec. 10-152. ~~Requirement waiver. Exemptions.~~*  
*Sec. 10-153. Application form and contents.*  
*Sec. 10-154. Additional required submittals.*  
*Secs. 10-155--10-170. Reserved.*

##### **Division 3. Limited Review Process**

- Sec. 10-171. Generally.*  
*Sec. 10-172. Legal effect of approval*  
*Sec. 10-173. General requirements for limited review process.*  
*Sec. 10-174. Types of development entitled to limited review.*  
*Sec. 10-175. Required submittals.*  
*Sec. 10-176. Appeals.*  
*Secs. 10-177--10-180. Reserved.*

##### **Division 4. Inspections and Certificate of Compliance**

- Sec. 10-181. Inspection of improvements generally.*  
*Sec. 10-182. Inspection of work during construction.*

Sec. 10-183. Final inspection and certificate of compliance.  
Secs. 10-184--10-210. Reserved.

#### **Division 5. Plats**

Sec. 10-211. Required.  
Sec. 10-212. Preparation and submission.  
Sec. 10-213. Technical requirements.  
Sec. 10-214. Contents.  
Sec. 10-215. Waiver of requirements. Exemptions.  
Sec. 10-216. Monuments.  
~~Sec. 10-217. Lot recombinations.~~  
Sec. 10-218. Noncompliance of individual lots.  
Secs. 10-218~~9~~--10-2~~30~~~~30~~. Reserved.

#### ~~Division 6. Preliminary Plan Approval~~

### **ARTICLE III. ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS AND REQUIREMENTS**

#### **Division 1. Generally**

Sec. 10-251. Applicability.  
Sec. 10-252. General design standards.  
Sec. 10-253. Consideration of soil conditions and flood hazards.  
~~Sec. 10-254. Lots.~~  
Sec. 10-255: 254. Street names.  
~~Sec. 10-256. Bikeways and pedestrian ways.~~  
~~Sec. 10-257. Marina design.~~  
~~Sec. 10-258. Emergency shelters for mobile home or recreational vehicle developments.~~  
Sec. 10-259: 255. Placement of structures in easements.  
Sec. 10-260: 256. Off-street parking and loading requirements.  
Sec. 10-257. Refuse disposal facilities.  
~~Secs. 10-261--10-280. Reserved.~~  
Secs. 10-258--10-284 Reserved

#### **Division 2. Transportation, Roadways, Streets, and Sidewalks Bridges**

~~Sec. 10-281. Official trafficways map.~~  
~~Sec. 10-282. Reserved.~~  
~~Sec. 10-283. Provision of access streets.~~  
~~Sec. 10-284. Functional classification of county roads.~~  
Sec. 10-285. Connection separation.  
Sec. 10-286. Traffic impact statements.  
Sec. 10-287. Traffic impact mitigation plan.

Sec. 10-288. Turn lanes.  
Sec. 10-289. Sidewalks. ~~Perimeter streets.~~  
Sec. 10-290. Local streets.  
Sec. 10-291. Access to street required.  
Sec. 10-292. Public streets to connect to existing public street.  
Sec. 10-293. Private streets.  
Sec. 10-294. Continuation of existing street pattern.  
Sec. 10-295. Street stubs to adjoining property.  
Sec. 10-296. Street design and construction standards.  
~~Sec. 10-297. Access standards for county roads tying within incorporated areas.~~  
Secs. 10-2~~98~~ 297--10-320. Reserved.

#### **Division 3. Surface Water Management**

Sec. 10-321. Generally.  
Sec. 10-322. Roadside swales.  
Sec. 10-323. Rear lot line swales and ditches.  
Sec. 10-324. Open channels and outfall ditches.  
Sec. 10-325. Reserved.  
Sec. 10-326. Inlet spacing.  
Sec. 10-327. Dedication of drainage system; maintenance covenant.  
Sec. 10-328. Reserved. ~~Drainage easements.~~  
Sec. 10-329. Excavations.  
Secs. 10-330--10-350. Reserved.

#### **Division 4. Utilities**

Sec. 10-351. Generally.  
Sec. 10-352. Connection to potable water system.  
Sec. 10-353. Connection to sanitary sewer systems generally.  
Sec. 10-354. Connection to reuse water system.  
Sec. 10-355. Easements; location of water and sewer lines.  
Sec. 10-356. Reserved. ~~Maintenance and operation of water and sewer systems.~~  
Sec. 10-357. Inspection of water and sewer systems; piping materials.  
Secs. 10-358--10-380. Reserved.

#### **Division 5. Fire Safety**

Sec. 10-381. Generally.  
Sec. 10-382. Reserved. ~~Applicability of division.~~  
Sec. 10-383. Variances. ~~Interpretation of division; conflicting provisions.~~  
Sec. 10-384. Minimum standards for all developments.  
Sec. 10-385. Design standards. ~~Developments provided with public water system.~~

~~Sec. 10-386. Developments not provided with public water system.~~  
~~Secs. 10-387-10-410. Reserved.~~

**Division 6. Open Space, Buffering, and Landscaping**

~~Sec. 10-411. Reserved. Purpose and applicability of division.~~  
~~Sec. 10-412. Definitions.~~  
~~Sec. 10-413. Major indigenous plant communities of the town.~~  
~~Sec. 10-414. Landscape and irrigation submittals. Buffers.~~  
~~Sec. 10-413. 415. Open space .~~  
~~Sec. 10-415. 416. Landscaping standards.~~  
~~Sec. 10-417. Irrigation standards.~~  
~~Sec. 10-418. Reserved. Stormwater ponds.~~  
~~Sec. 10-419. Alternate landscape betterment plans.~~  
~~Sec. 10-416. 420. Plant material standards. Size and type of vegetation; credits.~~  
~~Sec. 10-417. 421. Plant installation and maintenance standards. Preservation of street trees; installation of plant materials; maintenance of landscaping and open space.~~  
~~Sec. 10-422. Landscape certificate of compliance.~~  
~~Sec. 10-420. 423. Restoration standards for indigenous plant communities native vegetation removed without approval.~~  
~~Secs. 10-424-10-440. Reserved.~~

**Division 7. Public Transit**

~~Sec. 10-441. Applicability of division.~~  
~~Sec. 10-442. Required facilities.~~  
~~Sec. 10-443. Exceptions.~~  
~~Secs. 10-444-10-470. Reserved.~~

**Division 8. Protection of Habitat**

~~Sec. 10-471. Purpose of division.~~  
~~Sec. 10-472. Definitions.~~  
~~Sec. 10-473. Development application requirements.~~  
~~Sec. 10-474. Management plan.~~  
~~Sec. 10-475. Off-site mitigation.~~  
~~Sec. 10-476. Variances.~~  
~~Secs. 10-477-10-500. Reserved.~~

~~Division 9. Six Mile Cypress Watershed~~

~~Division 10. Lakes Regional Park Watershed~~

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

~~Sec. 10-601. Purpose and intent.~~  
~~Sec. 10-602. Applicability.~~  
~~Sec. 10-603. Prohibitions.~~  
~~Sec. 10-604. Exemptions.~~  
~~Sec. 10-605. Definitions.~~  
~~Sec. 10-606. Construction sites.~~  
~~Sec. 10-607. Stormwater pollution prevention plan (SWP3) criteria.~~  
~~Sec. 10-608. Enforcement.~~

**ARTICLE IV. ILLUSTRATIONS,  
TABLES, and DIAGRAMS**

~~Sec. 10-701. Major indigenous plant communities of the county.~~  
~~Sec. 10-702. Corner lots.~~  
~~Sec. 10-703. Lot depth.~~  
~~Sec. 10-704. Types of lots and lot lines.~~  
~~Sec. 10-705. Reserved.~~  
~~Sec. 10-706. Minimum specifications for bridge improvements.~~  
~~Sec. 10-707. Four- and six-lane arterial roadways.~~  
~~Sec. 10-708. Collector streets.~~  
~~Sec. 10-709. Public local streets.~~  
~~Sec. 10-710. Private local streets.~~  
~~Sec. 10-711. Access streets.~~  
~~Sec. 10-712. Recommended underdrain details.~~  
~~Sec. 10-713. Street intersections.~~  
~~Sec. 10-714. Culs-de-sac.~~  
~~Sec. 10-715. Utility placement in local streets.~~  
~~Sec. 10-716. Piping materials for use in right-of-way.~~  
~~Secs. 10-717, 10-718. Reserved.~~  
~~Sec. 10-719. Designated status of animal and plant species.~~  
~~Sec. 10-720. Driveway permit requirements.~~



**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, or 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.

~~Access street and access road.~~ [deleted]

**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, industrial, and other types of developments, except a single parcel

of land containing two or fewer dwelling units in a single structure.

~~Agriculture~~ [deleted]

**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 of the county department of community development or his designated representative for review.

~~Architect~~ [deleted]

~~Bicycle path and bike path~~ [deleted]

~~Bikeway~~ [deleted]

~~Block~~ [deleted]

~~Board~~ [deleted]

**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.”

~~Comprehensive plan~~ [deleted]

**Connection** means a driveway, accessway, street, access road or other means of providing access to or from local or major streets. the county highway system. Two one-way driveways separated by no more than 50 feet will be considered one connection.

~~County highway system~~ [deleted]

**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.

~~Contiguous.~~ See *Abutting*.

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

**County** means Lee County, Florida.

**Cul-de-sac** means a turnaround at the end of a dead-end local street closed at one end.

**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 development review director** means any act of the ~~development review~~ director in interpreting or applying this chapter to a particular request for a requirement waiver, limited review processing, an exemption 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 of development review~~ must be a professional engineer, registered in the state. If the ~~director of development review~~ is not a registered professional engineer, the ~~development review~~ director shall adopt the decision of a designated the county's professional engineer, or the person who is designated to act on behalf of that the county's professional engineer and who is supervised by that the professional engineer, as the basis for whatever final formal decision is made by the development review director. In those cases, the phrase "decision of the development review director" means the ~~decision made by the county's professional engineer, or a person supervised by the county's professional engineer, and adopted by the development review director.~~

**Density** has the same meaning as in ch. 34 of this code. means an existing or projected relationship between numbers of dwelling units and land area.

**DEP DER** means the Florida Department of Environmental Protection Regulation.

**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 (df); or
- (2) Any improvement to land, as defined in this chapter (df).

**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 ~~county development review~~ 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).

~~DHRS [deleted]~~

**Development review Director** means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee, county staff person or his designee assigned to oversee the development review process. He shall oversee the intake of applications for completeness, oversee the review of plans for compliance with this chapter, and issue notifications to applicants. ~~This term is synonymous with the terms "development review coordinator" and "county engineer" as they are used in this chapter.~~

**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. means a room or rooms connected together, constituting a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis, which is physically separated from any other rooms or dwelling units which may be in the same structure, and which contains sleeping and sanitary facilities and one kitchen. The term "dwelling unit" shall not include rooms in hotels, motels, or institutional facilities. Types of dwelling units are further defined in ch. 34 of the land development 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.

~~Expressway [deleted]~~

**FDOT** means the Florida Department of Transportation.

~~FGFWFC means the Florida Game and Fresh Water Fish Commission.~~

~~Freeway [deleted]~~

~~Frontage street [deleted]~~

~~Habitable floor [deleted]~~

~~Herbaceous plant [deleted]~~

**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.

~~HD [deleted]~~

**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; vegetation;~~ 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 ~~native vegetation~~** means those plant species which are characteristic of the major plant communities of the ~~town as county,~~ listed in § 10-413 701. Areas where invasive exotic vegetation has exceeded 75% of the plant species by quantity will not be considered indigenous plant communities.

~~Individual sewage disposal system or facility~~  
[deleted]

~~Intensity of use~~ [deleted]

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

~~Landscape architect~~ [deleted]

~~Large development~~ [deleted]

**LBR** means limerock bearing ratio.

**Lot** means a parcel of land considered as a unit.

~~Lot area~~ [deleted]

~~Lot, corner~~ [deleted]

~~Lot coverage~~ [deleted]

~~Lot depth~~ [deleted]

~~Lot, double-frontage~~ [deleted]

~~Lot, flag~~ [deleted]

~~Lot frontage~~ [deleted]

~~Lot, interior~~ [deleted]

~~Lot line~~ [deleted]

~~Lot line, front~~ [deleted]

~~Lot line, rear~~ [deleted]

~~Lot line, side~~ [deleted]

~~Lot, L-shape~~ [deleted]

~~Lot of record~~ [deleted]

~~Lot, through~~ [deleted]

~~Lot width~~ [deleted]

**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 alternations of the landscape.

~~On-road bikeway or bike lane~~ [deleted]

**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 county 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.

~~Private water system [deleted]~~

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

~~Public sewage system [deleted]~~

**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 board, through express action at a public hearing, has accepted the offer of dedication. Regardless of the governing body's board's acceptance of the offer of public dedication, the governing body board may or may not have accepted the street for maintenance purposes.

~~Public water system [deleted]~~

~~Rehabilitation [deleted]~~

~~Reverse frontage street [deleted]~~

~~Road capital improvement [deleted]~~

~~Road expansion [deleted]~~

**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.

~~Service area [deleted]~~

~~Setback line, front or street [deleted]~~

~~Sewage system~~ means a system of pipes, pumps, tanks, or wastewater treatment plants and all other appurtenances or equipment needed to treat, transport, and dispose of sewage.

~~Sewerage system. See Sewage system.~~

**FWMD** means the South Florida Water Management District.

**Sidewalk** means a paved pedestrian way; within or immediately adjoining a street right-of-way or easement, paralleling and usually separated from the street.

~~Sidewalk, off-site [deleted]~~

~~Sidewalk, on-site [deleted]~~

**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. Access or frontage roads that are not shown as having been considered in impact fee calculation and so identified on figure 2 in the March 1989 report entitled "Lee County Impact Fee Transportation Data Final Report," which document has been placed on file with the clerk of courts and which is incorporated in this section by reference; and
- (6) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

~~Small development [deleted]~~

~~Soil classification [deleted]~~

**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.
  - a. ~~Street, arterial~~ means streets primarily intended to carry large volumes of through traffic connecting major activity centers to other major traffic generators. Access to abutting properties is a secondary function.
  - b. **Street, local** means all streets other than major streets, whose with the primary function is being to serve adjacent properties. As such, a local street provides the linkage from adjacent land uses to the collector street system.

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.
- e. ~~Street, major collector~~ means streets having the primary purpose of collecting traffic from intersecting local and minor collector streets and distributing this volume to the nearest arterial. A secondary purpose is to carry moderate volumes of through traffic. Access to abutting land uses is a secondary function.
- d. ~~Street, minor collector~~ means streets having the primary purpose of collecting traffic from intersecting local streets and distributing this volume to the nearest major collector or arterial. As such, a minor collector street provides the linkage from neighborhoods (i.e., local streets) to the arterial system, and provides intra-neighborhood access. Access to abutting land uses is a secondary function.

**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. ~~board.~~

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

~~Street, substandard [deleted]~~

**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) ~~A subdivision~~ 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 wherein the new lot, or any remaining portion of the original lot, is less than 10 acres in size; 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; and
  - d. ~~The division of land for the purpose of creating a single condominium as defined in F.S. chs. 718 and 721.~~
- (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 Lee Plan and all other applicable provisions of this code chapter. 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.

~~Trafficway [deleted]~~

**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. as used in this chapter, shall include the term duplex as defined in ch. 34 of the land development 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. a notarized agreement or covenant running with a parcel of land stipulating that the subject parcel shall be held under single ownership or control and shall not be transferred, conveyed, sold or divided in any unit other than in its entirety; provided, however, that:

- (1) ~~Individual condominium units or residential subdivision lots, if any, may be conveyed.~~
- (2) ~~A subunit of the project may be transferred, conveyed or sold if the purchaser agrees to abide by all applicable stipulations and conditions specified in the approved development order.~~

**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.

~~Zoning ordinance [deleted]~~

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

**Sec. 10-2. Purpose of chapter.**

The board of county commissioners finds that the present and probable future growth of population; commerce and industry in the county is of such magnitude and complexity that the prudent regulation of land development is required in order to protect the public health, safety, and welfare and to implement the county comprehensive plan.

(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 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 § 10-601-700.

**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 county shall not be construed to be applicable in this

chapter. ~~In the absence of a definition, the definitions of terms in other ordinances and regulations shall be persuasive only unless specifically referenced as being also applicable in this chapter.~~

~~(c) § 34-1122 et seq., establishes a redevelopment overlay district which provides for the preparation and adoption of master plans for community redevelopment areas or portions thereof. The master plan may contain development regulations which supersede some or all of ch. 34, this chapter and other land development regulations.~~

~~(d) In areas for which a master plan has been adopted, as defined in § 34-1122 et seq., a property owner may elect to develop/redevelop in compliance with the master plan or in compliance with existing zoning and development regulations.~~

~~(e) If the property owner elects to comply with the adopted master plan, then to the extent that such plan addresses a regulation set forth in ch. 34, this chapter or in any other land development regulation, the master plan will take precedence. To the extent that the master plan does not address a regulation, the standard ordinances shall prevail.~~

**Sec. 10-4. Reserved. Conflicting provisions:**

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

**Sec. 10-5. Reserved. Effective date; repealer; applications in process and existing development orders: *[deleted in its entirety]***

**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.

(a) The board or any person with standing may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this chapter, including injunctive relief to enjoin and restrain any person from violating this chapter.



~~(b) Any person who violates this chapter may, at the option of the county, be prosecuted before the county hearing examiner in accordance with F.S. ch. 162 and ch. 2, article VII.~~

~~(c) Any person who violates this chapter or fails to comply with any of the requirements in this chapter shall, upon conviction thereof, be punishable as provided in § 1-5, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Prosecution pursuant to this section may be in addition to or in lieu of enforcement under subsection (a) of this section.~~

**Sec. 10-7. General requirements.**

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

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

~~(c) No~~ 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, the development order or permit results in a further reduction in the levels of service for the affected roads below the levels of service provided for in the comprehensive plan, unless appropriate mitigation is provided or the applicant otherwise complies with ch. 2, article II, relating to concurrency management. However, notwithstanding this limitation, in no event shall a developer be required by the operation of this chapter to mitigate impacts caused by earlier development. For purposes of applying this subsection, in the case of developments expected to add less than 300 vehicle trips during the peak hour to the adjacent road system, the developer shall be presumed conclusively to have mitigated the off-site impact on roads caused by the development if the developer pays whatever roads impact fees are required by applicable county roads impact fee ordinances. In all cases, the developer shall be responsible for the full cost of site-related improvements.

~~(d) (c)~~ 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, tree removal permit, or notice of clearing shall be issued on a parcel of land, or any portion thereof, that is the subject of existing ~~code~~ violations of this code, development standards ordinance violations or other land development ordinance violations, 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. Specific requirements:**

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 county'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. Traffic pattern.*** There must shall be adequate circulation, ingress, and egress to the development for both pedestrians and motorists. Except for single-family and two-family developments, the proposed structures shall be located so as to avoid backing of vehicles into streets, the intermingling of automotive and pedestrian traffic, or the intermingling of traffic flow in opposite directions. 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 narrow or poorly aligned streets or from excessive exit and entrance points along major arterial and collector streets.
  - c. The development shall be designed so as to minimize traffic impacts on surrounding areas, particularly to prevent traffic related to industrial land uses (see ch. 34) from traveling through predominantly residential areas. Main access points to a development will not be established where traffic is required to travel over local streets through areas with significantly lower densities or intensities, e.g., multifamily access through single-family residential areas, except where adequate mitigation can be provided.

~~d. The development shall be designed so as to allow for access by emergency vehicles:~~

~~(3) *Traffic impact mitigation:*~~

- ~~c. a. *Traffic impact studies:* 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. A traffic impact statement is necessary to:
  - ~~1. Provide vital information to public decision makers who must evaluate development proposals and traffic impacts generated by a development;~~
  - ~~2. Ensure that safe and efficient access is provided to the development;~~
  - ~~3. Minimize the proposed development's adverse traffic impacts and minimize traffic congestion on the road system;~~
  - ~~4. Monitor growth and development for the preparation of subarea and corridor transportation studies;~~
  - ~~5. Establish the appropriate timing for needed road and intersection improvements to ensure that public roadway capacity is available when demand is anticipated to occur; and~~
  - ~~6. Provide the technical background and assumptions needed to plan road improvements.~~~~

~~d. b. *Traffic impact mitigation plan:* 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.~~

~~The technical requirements regarding traffic impact statements and traffic impact mitigation plans are specified in article III, division 2, of this chapter.~~

- ~~(4) *Official trafficways map.* [deleted in its entirety]~~
- ~~(5) *Bicycle path and pedestrian ways plan.* [deleted in its entirety]~~
- ~~(6) *Required access streets.* [deleted in its entirety]~~
- ~~(7) *Water and sewage systems.* The~~

~~development must be proposed in such a way as to prevent any potential hazards to the health, safety, and welfare of the public, especially with regard to the provision of potable water or sanitary sewage services.~~

Unless otherwise excepted in this chapter, All new residential, commercial or industrial development proposed within the certificated or franchised service areas of regulated private (investor- or subscriber-owned) water or sewer utilities, or within the designated future water or sanitary sewer service areas of county utilities, as shown and specified in the Lee Plan, must connect to that the public potable water or and sanitary sewer systems. Where a development is permitted to stand free of established potable water or sanitary sewage systems, the water and sewage systems proposed to serve that development must be of sufficient capacity for the intended initial uses, and provisions must be made for expansion, increased capacity and extensions for any future uses through appropriate and binding legal commitments, including the commitment to connect to a central system at such time as it is created or extended to the development.

- (4) ~~(8)~~ ***Drainage and stormwater management.*** The development must be designed in accordance with applicable county and water management districts' runoff, retention, and attenuation requirements of SFWMD and this chapter, and any other state and local drainage laws. The development must also be designed to avoid flooding or erosion damage to adjacent property and the town county 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.
- ~~(9)~~ ***Open space, parks, and recreation.*** Sufficient open space must be provided for the use of the occupants of the development. Recreation facilities and parks must be located so as to avoid nuisance conditions affecting adjacent and nearby properties, and must be of a sufficient size and variety for all occupants of the development. Every effort must be made to locate required open space so as to protect archaeological sites.
- (5) ~~(10)~~ ***Landscaping and buffering.*** Adequate landscaping, including screens and buffers, to preserve compatibility with uses outside the proposed development must be provided; and, as a furtherance of the ecological

preservation goal, vegetation, trees, and signs must be in accordance with this chapter and must be aesthetically pleasing.

- (6) ~~(11)~~ ***Fire protection.*** The development must include an adequate fire protection system.
- (7) ~~(12)~~ ***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.
- ~~(13)~~ ***Intensity of use.*** Nonresidential development must have an intensity of use 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.
- (8) ~~(14)~~ ***Historic resources.*** The development must provide for the identification, recognition, protection, or mitigation of the historical and archaeological resources of the town county, as provided by the historic preservation element of the Fort Myers Beach Comprehensive Lee 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. 10-109--10-50. Reserved.**

**ARTICLE II. ADMINISTRATION  
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 building consisting of one or two dwelling units (and accessory structures as defined in ch. 34 the zoning regulations) on a single buildable lot (or two lots in the case of a two-family dwelling) ~~(may be subject to review pursuant to article III, division 9 of this chapter;~~
- ~~(2) Agriculture, as defined herein (may be subject to review pursuant to article III, division 9 of this chapter);~~
- ~~(2) (3) For the installation of propane or LNG tanks incidental to the permitted use on a parcel up to a maximum capacity of 2001~~

- ~~gallons, provided the county fire official has approved such installation;~~
- ~~(3) (4) Signs that are regulated by ch. 30 of this code the county sign ordinance;~~
- ~~(4) (5) Any development which has already received a building permit that is still in effect;~~
- ~~(6) Any development which received final site plan approval by the current planning department and the division of transportation and public works between November 10, 1981, and November 10, 1982, and began physical construction between November 10, 1981 and November 10, 1983;~~
- ~~(5) (7) Temporary construction trailers;~~
- ~~(6) (8) Beach renourishment projects;~~
- ~~(7) (9) 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 board of county commissioners; prior to the issuance of building permits, ~~except for building permits for model buildings and sales centers.~~ 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. Prerequisite Prior zoning approvals for development order submittals.**

(a) ~~In accordance with administrative code policy 13-4, as it may be amended, Any applicant who intends to submit an application for development order approval on a project with planned development zoning will have the submittal reviewed which was zoned RPD, MHPD, RVPD, CPD, CFPD, IPD or AOPD prior to December 2, 1991, shall submit 4 complete sets of plans and documents to the zoning review staff, who will review the submittals for full compliance with the adopted master concept plan and any conditions of approval. Plans may be reviewed concurrently for compliance with this chapter and with the terms of the zoning approval. 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. Specific reference to the districts listed in this section and the required review does not obviate the need to have plans reviewed for zoning compliance for conditions placed on other types of zonings, PUD's, special exceptions, variances and special permits.~~

(b) ~~All applications for development orders on property zoned RPD, MHPD, RVPD, CPD, CFPD, IPD, AOPD or MPD after December 2, 1991, shall be reviewed for compliance with the approved master concept plan and all other conditions of approval as part of the development order review process.~~

(b) ~~(c)~~ 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. ~~chairman of the board of county commissioners is issued.~~

**Sec. 10-104. Deviations and variances.**

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

- ~~(1) § 10-283 (access streets);~~
- (1) (2) § 10-285 (intersection separations);
- (2) § 10-289 (sidewalk widths);
- ~~(3) § 10-296, Table 2 (right-of-way widths for county-maintained streets);~~
- ~~(4) § 10-296, Table 3 (right-of-ways widths for privately maintained streets);~~
- (3) (5) § 10-296, Table 10-2 4, items (1)(2)--(7) and (13) (road specifications);
- ~~(6) § 10-296(g) (horizontal curves);~~
- (4) (7) § 10-296(j) (intersection designs);
- (5) (8) § 10-296(k) (cul-de-sacs);
- (6) (9) § 10-322 (swale sections);
- (7) § 10-329(c)(1) (setbacks for water retention/detention excavation from private property)
- ~~(10) § 10-352 (public water);~~
- ~~(11) § 10-353 (public sewer);~~
- (8) (12) § 10-385(c) (water mains);
- (9) § 10-416(b) (landscaping of parking and vehicle use areas)
- (10) (13) § 10-441 (mass transit facilities).

(b) *Criteria for administrative deviations.* Administrative deviations shall be granted only where the development review director, with the assistance of directors of other affected county departments and/or divisions, and/or affected jurisdictions, 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 §§ 10-352, 10-353, and 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 board of county commissioners, any other ordinance, or any Fort Myers Beach Comprehensive Lee Plan provision; and
- (5) For §§ 10-352 and 10-353, the utility that would otherwise serve the development cannot provide the service at the adopted level of service standard due to an inadequate central facility.

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

- (1) A completed application form provided by the director division of development review;
- (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 § 34-86.145(a). The town council hearing examiner 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. , the Lee County Zoning Ordinance. Applicants for administrative deviations that have been denied by the director or the hearing

examiner may also apply for variances or deviations in accordance with the procedures and criteria in ch. 34, this section. The hearing examiner shall grant Variances from the DSO only upon a finding that the following criteria have been satisfied:

- (1) The granting of the variance would not threaten the health, safety, or welfare of abutting property owners or the general public;
- (2) The requested variance is consistent with the Lee Plan;
- (3) The requested variance will not create an undue burden on essential public facilities; and
- (4) The standard from which the variance is being requested is unreasonably burdensome, as applied to the applicant's property and development plans.

(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) **Variances or Deviations in planned developments.** For developments that have received zoning as a planned development, specific variances or deviations from the terms of these regulations shall not be required if such variances or deviations were approved as part of the schedule of deviations attendant to the master concept plan. Any requests for variances or deviations that were not included on the approved master concept plan shall be processed in accordance with this section.

**Sec. 10-105. Preapplication meeting.**

All applicants are encouraged to submit an application for an informal meeting with before the development review 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 county staff.

**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 ~~preliminary development order or final~~ 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 ~~preliminary or final~~ 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 ~~of development review~~. The director ~~of development review~~ 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, ~~including small developments~~, 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 ~~of development review~~.**

(a) The submittal for development order approval shall be made to the director ~~of development review~~. The director ~~of development review~~ 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 ~~of development review~~ 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 ~~of development review~~ 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 ~~of~~

~~development review~~. 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 ~~of development review~~ in the conditional approval letter.

(c) When the director ~~of development review~~ 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 ~~of development review~~ 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 ~~development review~~ 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 ~~of development review~~ to substantiate compliance with this chapter.

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

When the director ~~of development review~~ grants approval of all development order submittals, the development order shall be issued. The director ~~of development review~~ 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 ~~development review~~ director in accordance with § 34-86. Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall not have standing to appeal any administrative decision granting or denying any development order.
- (2) An appeal is not a legal substitute for a variance. Any and any appeal that requests a departure from or waiver of the terms and conditions of this chapter is a variance which shall not be heard through the appeal process, except as provided in § 10-104(f).

~~(b) Procedure. The appellant must file a written appeal of the director of development review's decision in accordance with those procedures set forth in ch. 34 for appeals of administrative decisions.~~

(b) ~~(c)~~ *Decisions.*

- (1) If the decision of the ~~development review~~ 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 ~~development review~~ director is reversed without modifications, then the applicant may prepare ~~proceed to the preparation of~~ the submittals required for final approval or be issued a development order by the ~~development review~~ director, as appropriate.
- (3) If the decision of the ~~development review~~ 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 master.***

- (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 master 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 master 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 ~~development review~~ director, shall be executed, and the ~~development review~~ 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 county permits which must be obtained;
- (3) Any other conditions which the director ~~of development review~~ 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 6 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 6 years. A development order for property which is the subject of a duly executed development agreement (see §§ 2-91–2-300) ~~may~~ will be authorized for a different ~~the~~ period if so prescribed in the development agreement.

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

- (1) ~~and~~ 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 ~~large~~ 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 6 years of the development order approval of the last phase approved. If the development order for a subsequent phase is not approved within 3 6 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) ~~All~~ Documents approving the issuance of development orders may ~~must~~ contain language in large print stating that the development order's concurrency approval certificate is ~~only~~ effective for a shorter period than the remainder of the development order, in accordance with article II of ch. 2 for 3 years from the approval. No vested right to a concurrency approval certificate 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

~~(b) Types. In general, there are two types of phased projects:~~

- ~~(1) Projects that are the subject of a development order application which shows all required facilities, infrastructure, and buildings, if applicable, on the entire parcel of land that is covered by the development order; and~~
- ~~(2) Large projects that are the subject of a development order application which shows specific facilities, infrastructure and buildings, if applicable, on portions of the~~

~~parcel of land that is covered by the development order. The large proposed development order may also show tracts of land that are proposed for future development. For such phased large developments, each future phase shall be issued a separate development order, but each phase shall be considered in relation to the rest of the overall project.~~

~~(b) (c) General requirements.~~ The development order drawings or plans for each phase shall be sufficiently clear to show compliance with this chapter. ~~Adequate infrastructure facilities must be provided to support each phase of the project as the project is developed.~~

~~(d) Large phased projects. [deleted in its entirety]~~

**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 of development review, 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 of development review 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 county 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 ~~of development review~~. The minor change application shall be accompanied by revised plans, reports, and other appropriate submittals to allow the director ~~of development review~~ 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 ~~and the development order~~ 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.
- (3) ~~A notarized statement of ownership or unified control for the entire development.~~
- (4) ~~A notarized letter signed by the property owner which designates the individual or firm that is authorized to act in behalf of the owner on all matters pertaining to 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 county 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 ~~director of development services~~ 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; ~~and~~
- (4) The development order is in compliance with the county Fort Myers Beach Comprehensive Plan and this code; ~~and all other county land development regulations~~;
- (5) The development order does not conflict with any incipient policies of the town council.

~~(b) Where the director recommends a denial of the extension request, or where the developer contests the proposed conditions placed on a development order extension by the director, the developer may request the board of county~~

~~commissioners to grant the extension provided items (1) through (4) can be satisfied.~~

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

**Sec. 10-124. Coordination of review, between county departments:**

The review of development orders is a multidiscipline review process involving zoning, transportation, stormwater management, utilities, environmental issues, etc. The director ~~of development review~~ may obtain assistance and advice, as appropriate, from other town or county departments ~~and divisions~~ to ensure compliance with this chapter. ~~The development review director will share information with other county departments and divisions for planning and programming capital improvement projects.~~

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

**Subdivision III. Submittals**

**Sec. 10-151. Generally.**

(a) Except as may be specifically waived ~~exempted~~ by the director of development review 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 ~~shall be~~ 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. Exemptions:**

The director of development review may waive the requirement for any submittal item which he deems unnecessary for an adequate review of the proposed development ~~under this division~~. 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. ~~Submittal exemptions shall be granted at the discretion of the director of development review.~~

**Sec. 10-153. Application form and contents.**

The application form for development order approval shall be obtained from the director ~~department of community development~~. 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 ~~parties~~ having an ownership interest in the ~~subject~~ property, including the names of all stockholders ~~owning 10 percent or more of outstanding stock~~; and names of 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) ~~(2)~~ **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) ~~(3)~~ **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. ~~Existing development standards exemption applications and approvals on the property.~~
  - e. Federal, state, and local permits and stipulations affecting the development order applications.
- (5) ~~(4)~~ **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) ~~(5)~~ **Permits required for development.**
  - a. State and federal permit information.
  - b. Local permit information.

- (2) ~~(4)~~ **Title assurance.** Title assurance in the form of either a title certification by an attorney or a title insurance policy shall be required.
- (3) ~~(5)~~ **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 ~~The boundary line shall~~ include the entire area to be developed. The Federal Emergency Management Agency flood zone and required finished floor elevations shall be shown.
- (4) ~~(6)~~ **Plat.** If the development is a subdivision, a plat meeting the requirements of F.S. ch. 177 shall be submitted.
- (5) ~~(7)~~ **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) ~~(8)~~ **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 arterial and collector 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), applicable.
  - 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

**Sec. 10-154. Additional required submittals.**

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

- ~~(1) Letter of authorization. In the event the applicant is not the owner, a notarized letter signed by the owner of the property authorizing the applicant to submit and be responsible for the application is required.~~
- ~~(2) Ownership and unified control. A notarized statement of ownership or unified control of the entire development is required.~~
- (1) ~~(3)~~ **Legal description.** A legal description for the property shall be submitted.

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 of development review may direct a closer grid pattern or elevations more than 25 feet beyond the development boundary to provide sufficient satisfactory information. For developments of 40 acres or more, contours at one-foot intervals shall be shown.

- e. **Wetlands.** Identification of wetlands resource protection areas and transition zones as defined in ch. 34 the Lee Plan. The applicant may be required to flag these areas for site inspection by the staff of the department of community development.
- 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, significant areas of rare and unique upland habitats as defined in the Lee Plan.
- 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 public water and sewage systems, private wells, irrigation and flowing 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. ~~The fire district in which the proposed development is located.~~
- k. **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) ~~(9)~~ **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, Where a large development is proposed, the applicant must submit a master phasing plan with the stages numbered in sequence. It is understood that, for long-term projects, the details of a given phase may change as the economic, environmental, social, and legal elements of the proposed development change. For such phased developments, each phase will be issued a separate development order, but each phase will be considered in relation to the rest of the overall project. 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 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, parks and recreation.** All proposed open space, parks 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 ~~on-site and off-site~~ 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 :
  - ~~1. The names and address of all utilities, governmental or private, intended to supply the service.~~
  - ~~2. The names and addresses of the owners of all existing public water and sewage systems within one-quarter mile of the proposed development.~~
  - ~~3. a plan showing the location and size of all water mains and services, fire hydrants, sewer mains and services, treatment plants, 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 ~~the South Florida Water Management District~~ shall also be submitted. ~~The plan shall also identify the U.S. Department of Agriculture Soil Conservation Service soils classifications of the site to determine the feasibility of the proposed pollution control and drainage plans.~~
  - 1. **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.~~ county regulations.
    - 3. ~~All proposed landscaping, open space, fencing, screening, 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.
  - ~~3. The size, variety, species, and number of all trees and shrubs, with site-specific location, used in landscaping, open space, and buffer areas.~~
  - ~~4. All proposed signs and exterior lighting.~~
- 12. The narrative and calculations to demonstrate that the proposals will comply with this code.
  - ~~5. The calculations to determine the minimum open space and other landscaping calculations~~
- 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.
- ~~o. A description of potential impacts to groundwater and surface water.~~
- p. **Wetlands.** A description of impacts on wetlands and mitigation measures.
- ~~q. A description of impacts on floodplains or riverine areas and mitigation measures.~~
- ~~r. Benchmarks. There shall be a minimum of one benchmark per 40 acres or portion thereof. Each benchmark shall be shown and described on the plans.~~
- (8) **Exterior lighting plan, photometrics, and calculations.** An exterior lighting plan and photometric information must be submitted in accordance with requirements of ch. 34.
- (9) ~~(10)~~ **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) ~~(11)~~ **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) ~~(12)~~ **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 collector or arterial~~ to which the adjacent street is tributary. Criteria for traffic impact mitigation plans are specified in article III, division 2, of this chapter.

- (12) ~~(13)~~ **Hazardous materials emergency plan.** Any applicant for a new marina or an expansion to an existing marina private port facility which did not receive approval of a hazardous materials emergency plan at the time of rezoning shall be required to submit a hazardous materials emergency plan, which shall be subject to the approval of the county divisions of emergency management; ~~water resources and planning;~~ and of the ~~appropriate~~ 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.
- ~~(14) **Port facility permits.** New or improved port developments shall submit copies of all required leases and permits from other jurisdictions and agencies.~~
- (13) ~~(15)~~ **Protected species survey.** A species survey shall be submitted, if applicable, as required by article III, division 8, of this chapter.
- (14) ~~(16)~~ **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) ~~(17)~~ **Certificate to dig; historic preservation forms and reports.** When applicable, an archaeological/historic resources certificate to dig shall be obtained from the department of ~~community development~~ and submitted to the director of development review. 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 ~~to the director of development review.~~

- (16) ~~(18)~~ **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 ~~to the director of development review.~~
- (17) ~~(19)~~ **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 ~~of development review.~~
- (18) ~~(20)~~ **Calculations and other pertinent materials.** The director of ~~development review~~ 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 of ~~development review~~, 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.
- ~~(21) **Fire protection plan.** Where the development falls outside of a fire district, the applicant shall submit proof, in writing, that he has provided for fire protection as approved by the county fire official.~~
- (19) ~~(22)~~ **Emergency preparedness plan.** Prior to final approval of a development order for a ~~hospital; nursing home, adult congregate assisted living facility~~ (AELF) or developmentally disabled housing project, an emergency preparedness plan ~~approved by acceptable to the director of the division of emergency management;~~ 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) ~~(23)~~ **State permits.** Prior to final approval of a development order, copies of permits issued by ~~SFWMD the South Florida Water Management District or DEP~~ shall be submitted. Copies of all other necessary state land development permits (~~FDOT, DER, HRS, etc.~~) shall be submitted prior to the commencement of any construction work on the site.
- (21) ~~(24)~~ **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) ~~(25)~~ **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) ~~(26)~~ **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) ~~(27)~~ **Assurance of completion of improvements.** Assurance of completion of the development improvements as specified in subsections ~~(27)~~ 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 of ~~zoning and development services~~ may be excluded from the requirements of subsections ~~(27)~~ a. and b. ~~In addition to the assurance of completion for off-site improvements, and with the exception of sidewalks on individual buildable lots, all subdivisions for single- and two-family residential structures must provide the assurance of completion of on-site improvements, or the construction of on-site improvements, within one year of the date of issuance of the final development order for that subdivision.~~
- a. **Surety or cash performance bond.** Security in the form of a surety or cash performance bond must be posted ~~with the board~~ and made payable to the town county in an amount equal to 110 percent of the full cost of installing the required improvements approved by the town county. 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 of ~~zoning and development services~~. Prior to acceptance, bonds must be reviewed and approved by the town attorney county attorney's office.
  - 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 county 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 section. For developments meeting the criteria in this division section, no site improvement, tree clearing, or ~~issuance of building permits shall be issued occur~~ prior to approval of the development order ~~by the division of development review~~.

**Sec. 10-172. Legal effect of approval.**

Approval of a development order for a development described in this division subsections 10-174(4) and (5) may require additional permits before development may commence. All applications shall be reviewed by the director division of development review for compliance with the Fort Myers Beach Comprehensive Plan, the remainder of this code, the Zoning Ordinance (ch. 34), and 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 county Fort Myers Beach Comprehensive Plan.

The ~~director of development review~~ 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 ~~exempted pursuant to this section~~:

- (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 development which received final site plan approval by the current planning department and the division of transportation and public works prior to November 10, 1982, where the development has been actively constructed continuously, or in phases, in accordance with such approval.~~
- (3) ~~(4)~~ Any one-time subdivision of land into 4 or less lots ~~for single-family detached dwelling units or two-family attached dwelling units~~, where zoning district regulations permit such subdivision; provided, however, that:
  - a. Each lot must meet or exceed all ~~width, depth and area~~ requirements of the zoning district in which located;
  - b. Each lot abuts and has access to ~~a road which is maintained pursuant to Ordinance No. 87-19, as amended or replaced, or to an existing improved road~~ right-of-way or easement meeting at least the minimum construction standards required by this chapter. ~~This provision requires that each lot abut and have access to a road complying with the requirements of § 10-296. The maximum allowable density for a proposed lot that will abut and have access to any unpaved rock/shell road (a category D road) is one unit per 2.5 acres per §§ 10-296(d) and (e). Compliance with maximum density requirements of the Lee Plan is also~~

- required. Compliance with the roadway right-of-way width and wearing surface requirements of § 10-296 is required;
- 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. ~~This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road.; and~~
- (5) ~~Any subdivision of land for a use other than single-family detached dwelling units, two-family attached dwelling units or agricultural; provided, however, that:~~
- a. ~~Each lot must meet or exceed all requirements of the zoning district in which it is located, or the subdivision is approved by the director of community development under the provisions of § 34-2221(1), and the overall development complies with all other requirements of this chapter;~~
  - f. ~~b. No commercial or multifamily development may occur on any of the lots without first obtaining a development order;\_~~
  - c. ~~If the parent parcel is 10 acres or greater, a protected species survey may be required as specified in article III, division 8, of this chapter;~~
  - d. ~~Each lot shall abut and have access to a road which is maintained pursuant to Ordinance No. 87-19, as amended or replaced, or to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by this chapter;~~
  - e. ~~No alteration of existing utility installations is involved;~~
  - f. ~~No change in drainage will occur which negatively impacts the surrounding properties;~~
  - g. ~~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 are~~
- required. This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road; and
- h. ~~Reasonable conditions may be attached to the approval so that any development on all of the lots will comply with all county land development regulations.~~
- (4) (6) Any single building of two dwelling units or less and any accessory improvements thereto on a single nonconforming lot, as defined in article V of ch. 34, which is not a lot of record or a platted lot, provided the applicant submits sufficient evidence that the lot was purchased, or contracted for purchase, prior to January 28, 1983.
- (7) ~~Any development containing individual lots for single buildings of two dwelling units or less which, prior to January 28, 1983:~~
- a. ~~Has been approved by the county and registered with the state division of land sales and condominiums, provided that all improvements required or approved by the county have been completed or a surety has been posted and is current; or~~
  - b. ~~Has been approved for drainage, streets and utilities by the county and for which at least 51 percent of all lots along both sides of a street segment have been sold to individuals.~~
- (8) ~~An excavation or mining operation which is subject to ch. 34, article VII, division 15; subdivision H, and which received a general excavation permit, or a renewal permit, from the Board of County Commissioners after August 1, 1984.~~
- (5) (9) Any county-initiated improvements for public water access purposes in town-owned or town- county-owned or county= maintained rights-of-way.
- (6) (10) Any development for a fenced or screened enclosed storage yard 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) (11) The installation of new utility lines in existing right-of-ways or easements.

- (8) ~~(12)~~ 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 section:

- (1) A completed application, which shall be made on the application forms provided by the director ~~division of development review~~.
- (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 ~~of development review~~ may require. Additional data may include copies of deeds, sealed surveys, calculations, SFWMD South Florida Water Management District ~~District~~ permits, and other state, federal, or local permits.

**Sec. 10-176. Appeals.**

If the director ~~of development review~~ denies an application for a development order processed pursuant to this division section, the applicant may file an appeal of the director's ~~of development review's~~ written decision in accordance with the procedures set forth in ~~ch. § 34-86~~ for appeals of administrative decisions. ~~Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall not have standing to appeal an administrative decision denying an application for a development order issued in accordance with this section.~~

**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 of development review 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 of development review 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 of development review 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 division of development review 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 county 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 of development review. There shall be a minimum of one test per 1,000 feet, or two per project. Prior to acceptance by the town county, a copy of the test results shall be furnished to the director of development review.

**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 development review director along with a final inspection request. No final inspection will be performed by the town county 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 county 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 ~~development review~~ 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 ~~division of codes and building services~~. 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 ~~development review~~ 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 ~~division of codes and building services~~. 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**

**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, ~~approved by the board of county commissioners 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. Building permits may be issued for model buildings and sales centers prior to recording of the plat, subject to evidence of a unified control agreement and provided that any certificate of occupancy issued is for model or sales use only, until the plat has been recorded.~~

**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~~ in F.S. § 177.091. 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 at the time the plat is approved, are specified in the county administrative code entitled "Technical Requirements for Plats Submitted for Acceptance by the Board of County Commissioners."~~

**Sec. 10-214. Contents.**

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

**Sec. 10-215. Waiver of requirements. Exemptions:**

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 of development review~~ may permit the combination or recombination of up to 3 lots of record provided ~~that~~ the resulting lots comply with ch. 34, the Fort Myers Beach Comprehensive Lee 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 division of development review 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 ~~which~~ 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. A notarized statement of unified control, or a notarized statement of agreement for the lot recombination if co-applicants are applying for the recombination;
  - 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 ~~ch. § 34-86~~.
- (4) 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.

- ~~(b) The projects which may be approved in this matter are as follows:~~
- ~~(1) The subdivision of existing commercial and industrial developments;~~
  - ~~(2) Commercial or industrial developments which have received a development order;~~
  - ~~(3) A final development order which is still effective; or~~
  - ~~(4) A new final development order application.~~

**Secs. 10-218~~9~~– 10-25~~30~~. Reserved.**

~~DIVISION 6:  
PRELIMINARY PLAN APPROVAL  
[deleted in its entirety]~~

~~Sec. 10-218. Noncompliance of individual lots:~~

- ~~(a) The projects set forth in this subsection may be approved notwithstanding the noncompliance of the individual lots with property development regulations in ch. 34, and/or this chapter, provided that:~~
- ~~(1) The overall development is in compliance with all applicable zoning and development regulations;~~
  - ~~(2) All common areas such as streets and accessways, off-street parking, water management facilities, buffering, and open space are subject to unified control; and~~
  - ~~(3) Said subdivision is approved by the director of community development in accordance with the provisions of § 34-2221(1).~~

**ARTICLE III. ENGINEERING  
AND ENVIRONMENTAL  
DESIGN STANDARDS  
AND REQUIREMENTS<sup>1</sup>**

**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 ~~development review~~ director that the proposed development is specifically adapted and designed for the uses anticipated, including lot configuration, access, and internal circulation, ~~and that the development will be consistent with the criteria prescribed in the standards set forth in goals 12, 13 and 14 of the comprehensive plan.~~ The developer shall also demonstrate that the proposed development complies with all other provisions of the Fort Myers Beach Comprehensive Plan, ch. 34, this code chapter, 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, unusual rock formations, watercourses 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.

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<sup>1</sup>*Cross reference(s)--Buildings and building regulations, ch. 6; supplementary design standards in articles III & IV of zoning regulations, ch. 34; § 34-1141 et seq. commercial design standards, 34-991 et seq.*

**Sec. 10-253. Consideration of soil conditions and flood hazards.**

~~Development plans must comply with applicable coastal and floodplain regulations as set forth in articles III and IV of ch. 6. No development plan shall be approved unless the developer submits substantial and competent evidence that all lands intended for use as development sites can be used safely and for building purposes without undue danger from flood or adverse soil or foundation conditions. The following standards shall also be adhered to, as applicable: [remainder of section deleted]~~

~~Cross reference(s)--Floods, § 6-401 et seq.~~

~~Sec. 10-254. Lots. [deleted in its entirety]~~

**Sec. 10-2545. 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 ~~department of community development~~ and be indicated on the plat, if any, and on the site plan.

~~Sec. 10-256. Bikeways and pedestrian ways. [deleted in its entirety; subject moved to § 10-289]~~

~~Sec. 10-257. Marina design. [deleted in its entirety]~~

~~Sec. 10-258. Emergency shelters for mobile home or recreational vehicle developments. [deleted in its entirety]~~

**Sec. 10-2559. 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~~60~~. 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, VII~~, 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, VII~~, division 25. The development order drawings shall show all off-street loading areas to be provided on the project. ~~Off-street loading areas for all projects that are subject to this chapter shall comply with the off-street loading requirements specified in ch. 34.~~

**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~~61~~--10-284~~0~~. Reserved.**

**DIVISION 2. TRANSPORTATION,  
ROADWAYS, STREETS,  
and SIDEWALKS BRIDGES**

~~Sec. 10-281. Official trafficways map. [deleted in its entirety]~~

~~Sec. 10-282. Reserved.~~

~~Sec. 10-283. Provision of access streets. [deleted in its entirety]~~

~~Sec. 10-284. Functional classification of county roads. [deleted in its entirety]~~

**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. Connections of streets, access roads or accessways must be in accordance with Table 1 and the additional provisions of this section.

<u>When Connected to this Street Type:</u> <u>Functional Classification</u>	<u>Centerline Distance:</u> <u>(in feet)</u>
Arterial	660
Major street Collector	250 feet 330
Local street	125 feet
Access roads or Accessways	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 for local streets 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 Where residential lots are proposed for subdivision on arterial or collector streets as allowed under § 10-174(4), the director may authorize lesser separation distance if joint access with the adjoining property can be agreements are provided to preserve or maximize driveway connection separation distances. On local streets, where frontage dimensions of existing platted commercial or industrial lots do not accommodate required connection separation distances, the director will assign the access point(s) to accommodate spacing and safety concerns.~~

(b) ~~An access road which intersects another road which also intersects the parallel arterial or collector must have an outer separation of at least 100 feet from the arterial or collector.~~

(c) ~~Arterial streets. Existing corner commercial parcels on an arterial... [deleted in its entirety]~~

(d) ~~Existing corner commercial parcels on a collector... [deleted in its entirety]~~

(e) ~~The measurement of distance between connection points along multi-lane median-divided arterials or collectors with restrictive medians... [deleted in its entirety]~~

(d) (f) Approval of connection locations along multi-lane divided roadways, or along roadways which the director of transportation has verified will be multi-lane divided roadways, does not imply that such connection is permitted a crossover through any the median divider in existence now or in the future. Such access 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.

~~(g) The requirements of this section will not apply on roads which have been declared by the board of commissioners to be controlled access roads with designated access points. Those roads will be treated as otherwise provided.~~

~~(h) *Controlled access streets.* [deleted in its entirety]~~

~~(i) *Access points for future expressways.* [deleted in its entirety]~~

**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. ~~If traffic generated by the proposed development will add 300 or more vehicle trips during the peak hour to the adjacent road system, the developer shall submit a traffic impact statement providing a comprehensive assessment of the development's impact on the surrounding road system in accordance with the traffic impact statement guidelines which are available from the director of development review. If traffic generated by the proposed development is not expected to meet this threshold, the developer shall submit a traffic impact statement providing information regarding the development's traffic generation and impacts at the development's access points onto the adjacent street system.~~

~~(c) (1) The~~ 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. ~~division of development review.~~

(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) (3)~~ The traffic impact statement must be prepared by qualified professionals in the fields of civil or traffic engineering or transportation planning.

~~(5) (4)~~ The traffic impact statement shall be submitted to the director of development review or his designee for review of sources, methodology, technical accuracy, assumptions, findings, and approval.

(6) Approval of the traffic impact statement by the director of development review or his designee 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 Lee 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 of development review or his designee 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 Lee 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 ~~are required and~~ must be designed in accordance with standards set forth by Lee County in the county administrative code relating to turn lane policy. An existing development may request a one-time exception wherein only the expansion to an existing development will be used to calculate the traffic generated by the development for the purpose of determining whether turn lanes are required. After utilization of the one-time exception, any expansion of an existing facility will

~~be added to the existing facility for the purpose of calculating traffic generation and the entire development (existing and expansion) will be deemed a new development.~~ 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 ~~the~~ 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. Perimeter streets:**

~~Street systems in all developments shall be designed so as to eliminate existing partial width streets wherever possible and to avoid the creation of new ones. Where an existing partial width street is adjacent to a new development, the unimproved portion of the street shall be improved by the developer.~~

**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:**
- i. 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 ~~subdivision lots and condominium units and habitable structures~~ must abut and have access to a public or private street ~~designed and 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. ~~in accordance with this chapter.~~ Direct access for all types of development to



major ~~arterial and collector~~ streets must be in accordance with the intersection separation requirements specified in this chapter.

- ~~(3) Where practical, any residential development of more than 5 acres or any commercial or industrial development of more than 10 acres must provide two or more means of ingress or egress for the development. Additional access points may be needed for continuation of an existing street pattern, to provide access to adjoining properties, or where additional access is needed to provide alternate access for emergency services. Where feasible, these alternate access points should not be onto the same roadway.~~

**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; ~~and~~
- (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 contiguous property that the street shall be continually maintained. The owners of the abutting contiguous 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 county attorney's office 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 ~~where required by the director of development review~~ 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 ~~of development review~~ 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. ~~Where a developer proposes private local streets with controlled admittance, he may propose an alternate means of interconnection provided that such means does not require all local traffic to use the arterial network.~~ 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 to be established in a development~~ 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. ~~In addition, the following standards shall be applicable: AASHTO Green Book, as modified by FDOT MUMS and FDOT Standard Specifications, current editions, with supplements, and such other editions and amendments as may be adopted by the state department of transportation from time to time, and sound engineering judgment.~~

(b) **Right-of-way or easement width.** All roads and local streets to be established and constructed in accordance with this chapter shall have minimum right-of-way widths or roadway easements 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, complying with the requirements of Table 2 for streets that are proposed for county maintenance or Table 3 for proposed private streets.

(c) **Street and bridge design and construction standards.** All street and bridge improvements shall comply with the standards and specifications listed in Table 10-2 4, pertaining to minimum specifications for street improvements, and § 10-706, pertaining to minimum specifications for bridge improvements; for the applicable development category.

(d) **Street and bridge development categories.** For purposes of interpreting the specifications contained in Table 10-2 and § 10-706, development categories are defined as follows (with densities computed in accordance with § 34-632):

- (1) **Category A** shall include streets and alleys in commercial and industrial developments and all developments not described in categories B; and C and D.
- (2) **Category B** shall include streets and alleys in residential developments denser than 4 of 5 or more dwelling units per acre, except for such developments on islands where direct vehicular access to the mainland by a bridge, causeway or street system is not attainable.
- (3) **Category C** shall include streets and alleys in residential developments of more than 0.40 but with less than 4 5 dwelling units per acre; except for such developments on islands where direct vehicular access to the mainland by a bridge, causeway or street system is not attainable.
- (4) **Category D** shall include residential development of 0.4 or less dwelling units per acre, and all residential developments, regardless of size, located on islands where direct vehicular access to the mainland by bridge, causeway or street system is not attainable.

**TABLE 2. SPECIFICATIONS FOR COUNTY-MAINTAINED STREETS**

	Arterial	Collector	Local	Access
	Street	Street	Street	Street
<i>Minimum ROW widths:<sup>2</sup></i>				
Closed drainage	150'	100'	50'	40' <sup>3</sup>
Open drainage	150'	100'	60'	50' <sup>3</sup>
<b>Design speed (mph):</b>				
<b>Rural section:</b>				
With speed restrictions	60	40=50	N/A	N/A
Without speed restrictions	70	40=45	N/A	N/A
<b>Urban section:</b>				
With speed restrictions	35=40	30=35	N/A	N/A
Without speed restrictions	35=50	40=45	N/A	N/A
<i>The minimum radius for horizontal curves is to be determined by the ultimate number of lanes, design speed and super-elevation rate.<sup>1</sup></i>				
<i>The minimum distance between reverse curves is to be determined by the ultimate number of lanes, design speed and horizontal curvature.<sup>2</sup></i>				
<i><sup>1</sup>Refer to AASHTO Green Book and FDOT MUMS for specific design criteria.</i>				
<i><sup>2</sup>Minimum right-of-way widths for new roads in developing areas and desirable right-of-way widths for improvements in developed area. Wherever the official trafficways map specifies right-of-way width, those widths shall apply.</i>				
<i><sup>3</sup>This standard applies to frontage streets. The local street standard shall apply to all other access streets, including reverse frontage streets.</i>				

**TABLE 3. SPECIFICATIONS FOR PRIVATELY MAINTAINED STREETS**

<i>Minimum right-of-way/easement widths:</i>	Local	Access
	Street	Street
<b>One-way:</b>		
Closed drainage, rear lot drainage, or inverted crown	30'	30'
Open drainage	40'	35' <sup>1a</sup>
<b>Two-way:</b>		
Closed drainage or inverted crown	35'	35'
Open drainage	45'	40' <sup>1a</sup>
Minimum distance between reverse curves	N/A	N/A
Minimum centerline radius for horizontal curves	50' <sup>b</sup>	50' <sup>b</sup>
<b>Minimum grade of streets with:</b>		
Closed drainage	0.2%	0.2%
Inverted crown	0.4%	0.4%
Open drainage	0.0%	0.0%
<i><sup>1a</sup>This standard applies to frontage streets. The local street standard shall apply to all other access streets, including reverse frontage roads.</i>		
<i><sup>b</sup>If the centerline radius is less than 100 feet, the inside lane width shall be increased by two feet at the center of the curve.</i>		

**TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS**

Category	Minimum Specifications
ABCĐ	<p><del>Grading and centerline gradients. [deleted in its entirety]</del></p> <p><b>1 Construction in drainage swales.</b> Allowable construction in drainage swales shall be as specified in § 10-296(o).</p>
ABCĐ	<p><del>Pavement widths. [deleted in its entirety]</del></p> <p><b>2 Piping materials.</b> The types of piping materials allowed in rights-of-way shall be as specified in Lee County's land development code.</p>
ABCĐ	<p><b>3 Curb and gutter type B, F, and drop or shoulder (valley).</b> See FDOT Roadway and Traffic Design Standards, current edition.</p>
ABCĐ	<p><b>4 Roadside swales.</b> 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 of development services. *(Refer to § 10-720.)</p> <p>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.</p> <p>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.</p> <p>The director of development services 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.</p>
ABCĐ	<p><b>5 Subgrade.</b></p> <p>a. <del>Arterial and collector streets. [deleted in its entirety].</del></p> <p>b. <del>Local and access streets:</del></p>
A	<p>a. 1 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.</p>
BCĐ	<p>b. 2 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.</p>
ABCĐ	<p><b>6 Pavement base.</b></p> <p>a. <del>Arterial and collector streets. Eight-inch minimum compacted limerock.</del></p> <p>b. <del>Local and access streets:</del></p> <p>a. † Eight-inch compacted limerock.</p> <p>b. ‡ Six-inch compacted limerock.</p> <p>Đ 3 <del>Six-inch compacted limerock, shell, or soil cement.</del></p> <p>Any deviation from these standards must meet the specifications established by FDOT standards.</p>
A	<p><b>7 Wearing surface.</b></p> <p>a. <del>Arterial streets. [deleted in its entirety].</del></p> <p>b. <del>Collector streets. [deleted in its entirety]</del></p> <p>c. <del>Local and access streets:</del></p> <p>a. † One-and-one-half-inch asphaltic concrete of FDOT type S-III.*</p>

**TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS**

Category	Minimum Specifications
BC	<p><u>b.</u> <del>2</del> 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 development. An assurance of completion is required for the second course of asphalt. This provision is subject to the approval of the director. <del>** of development services in consultation with the director of the department of transportation.</del> For roads to be privately maintained, one-inch asphaltic concrete of FDOT type S-III is acceptable.</p>
D	<p><del>3</del> <b>Not required.</b></p> <p><i>*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 <del>driveways and public or private streets.</del> Further, if The design is for a street, it will be subject to structural analysis for comparison with asphaltic concrete.</i></p> <p><i>**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.</i></p>
ABC D	<p><b>8 Grassing and mulching.</b> 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.</p>
ABC D	<p><b>9 Street name and regulatory signs.</b> 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. <u>Regulatory signs will not be required at parking lot entrances for parking lots containing less than 25 parking spaces.</u></p>
ABC	<p><b>10 Street lighting.</b> 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 <u>town</u> attorney's office for compliance with this section. In the alternative, the <u>town board</u> may satisfy this requirement by establishing a street lighting <u>assessment municipal service taxing or benefit unit</u> which includes operation and maintenance of the streetlights.</p>
ABC D	<p><b>11 Street and intersection improvements; traffic control devices.</b></p> <p>a. <del>All streets and intersections within a development must operate at service level C or higher.</del> 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 to bring the level of service up to service level C.</p>
ABC D	<p>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, <del>subject to approval by the director.</del> <u>Additional lane and turn lanes must be as indicated by the Manual of Uniform Traffic Standards for Design, Construction, and Maintenance of Streets and Highways adopted by F.S. § 335.075, and sound engineering practice, for state facilities. For streets in the county, turn lanes must be as indicated in the county administrative code, the turn lane policy and sound engineering practice.</u></p>

**TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS**

Category	Minimum Specifications
	<p>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 <u>director county department of transportation</u>. This agreement must include the name, address, and phone number of a contact person who will represent the installing party.</p>
<p><del>ABC</del> <b>12</b></p>	<p><b><i>Underdrains.</i></b> Underdrains may be required on both sides of streets if, in the opinion of the <del>director of development review</del>, 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 to information generated by the developer's engineer. <del>See § 10-712 for suggested underdrain details.</del></p> <p>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.</p> <p>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.</p>
<p><del>ABC</del> <b>13</b></p>	<p><b><i>Road shoulders.</i></b> <del>Stabilized roadway shoulders or paved roadway shoulders must be provided as shown on the typical roadway cross section diagrams in article IV of this chapter.</del></p>

(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. Horizontal curve for changes in direction.*** ~~Horizontal curves shall be used for all changes in direction greater than 10 degrees.~~

(h) ***Reserved. Existing nonconforming access routes.*** ~~Existing nonconforming access routes to new proposed subdivisions shall be permitted upon approval of a variance or a planned development deviation.~~

(i) ***Reserved. State roads.*** ~~Streets which are designated as state roads shall be required to meet all additional state department of transportation requirements.~~

(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. Streets shall be designed to intersect as nearly as possible at right angles. Multiple intersections involving the juncture of more than two streets shall be prohibited. A minimum sight distance of 200 feet from every intersection shall be maintained on all intersecting streets. This requirement shall not be construed to increase the minimum allowable intersection separation of 125 feet.

- (1) The angle of intersection of intersecting streets shall be in accordance with the requirements of Table 5:

Street Type	Intersecting Street Type	Angle	
		Minimum	Maximum
Local or access	Local	75	105
	Collector	80	100
	Arterial	85	95
Collector	Collector	85	95
	Arterial	85	95
Arterial	Arterial	85	95

- (2) The inside edge of the pavement at street intersections shall be rounded with a minimum radius as shown in Table 6:

TABLE 6:  
MINIMUM EDGE-OF-PAVEMENT  
RADIUS AT INTERSECTING STREETS

Street Type	Intersecting Street Type	Minimum Radius(feet)	
		Residential	Commercial/ Industrial
Local	Local	25	30
	Other Collector	30	35
	Arterial	40	45
Collector	Collector	40	50
	Arterial	50	60
Arterial	Arterial	50	60

*These values apply to a street type having two lanes without a median. Whenever the street type is divided by a median, the minimum pavement width shall be 14 feet on each side of the median and the edge of pavement radius shall be determined by a special study using a WB-40 vehicle that negotiates the turn without encroaching on the median. Greater radii may be required where school buses will be routed or if an engineering study determines that traffic conditions warrant a larger radius.*

- (3) The property line radius shall follow the curvature of the inside edge of pavement and be offset a minimum distance equivalent to the pavement/property line offset used on the roadway design section.

(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. shall be closed at one end by a circular turnaround for vehicles and shall be constructed according to the following minimums:
  - a. Diameter of pavement to inside face of curb or edge of pavement: 90 feet outside diameter, 45 feet inside diameter.
  - b. Diameter of right-of-way for curb and gutter section: 110 feet.
  - c. The diameter of right-of-way for ditch and swale drainage shall be a minimum of 130 feet.
- (2) The island in the center of the circular turnaround may be paved solid, kept unpaved

~~to preserve existing vegetation, or enhanced with additional vegetation, provided that vegetation does not cause a visual obstruction between 2 ½ feet and 7 feet in height above grade, and provided further that proper maintenance agreements have been filed with the board.~~

- ~~(3) The transition from the cul-de-sac pavement to the regular approaching pavement width shall be as shown in § 10-714.~~
- ~~(4) On all roads to be maintained by and dedicated to the county, the length of a cul-de-sac shall be 500 feet or less. This length may be extended to a maximum length of 1,000 feet for single-family residential development only. The length of the dead-end street with cul-de-sac shall be measured along the centerline of the pavement from the centerline of the nearest lane of the intersecting street to the center point of the cul-de-sac. This subsection does not apply to privately maintained roads.~~
- ~~(5) All streets ending in culs-de-sac that are over 250 feet long shall have a standard “No Outlet” traffic sign installed at the street entrance and paid for by the developer.~~

~~(l) **Reserved.** On-road and off-road bikeways. [deleted in its entirety]~~

(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 ch. 34) – minimum dimensions are provided in division 26, article IV, chapter 34;
- (2) Parking lot accesses (as defined in this chapter ch. 34) – 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 50 or fewer multifamily residential units and to 100 or fewer parking spaces (in determining the number of parking spaces served by an accessway any landscaped areas reserved for future parking spaces shall be included);

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

~~(n) **Streets and driveways in wetlands.** resource protection areas and transition zones.~~

Notwithstanding other provisions of this chapter, if a new roads or driveways is permitted in wetlands a resource protection area or transition zone in accordance with policy 4-B-9 or 6-D-4 ~~25.1.7~~ of the Fort Myers Beach Comprehensive Plan Lee Plan, it shall be ~~culverted or 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 ~~do~~ any work within public county-maintained rights-of-way or easements without first having obtained a permit from the entity with maintenance responsibility. county department of transportation. 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 county department of transportation~~ will not issue a permit for any private road to connect to any town- or county-maintained road other than a residential driveway without approval of drainage plans prepared by a registered engineer. (See § 10-~~296~~ ~~716~~ for approved utility piping materials for use in county right-of-way.)
- (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.

~~Sec. 10-720. Driveway permit requirements:~~

- (4) Construction in Classification of 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 1/4 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 1/4 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 3/4 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 basin with grates will be required as dictated by the specific conditions of the area.

~~Sec. 10-297. Access standards for county roads lying within incorporated areas. [deleted in its entirety]~~

**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) ~~All~~ Development parcels exceeding the thresholds for a SFWMD environmental resource permit shall have stormwater management systems shall be designed in accordance with South Florida Water Management District (SFWMD) requirements and shall provide for the attenuation/retention of stormwater from the site. Issuance of a SFWMD permit shall be accepted as deemed to be in compliance with this division, chapter and review of these projects shall be limited to external impacts and wet season water table elevation. Projects granted SFWMD exemptions shall be subject to review by the county and will follow the criteria and requirements of the SFWMD.
- (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 of development review 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.**

~~(b) Development outside future urban areas to comply with policies of Lee Plan; surface water management plans within urban areas. [deleted in its entirety]~~

**(c) Crown elevation of local subdivision streets.** Except as provided in subsection (d) of this section; Minimum elevation of the crown of local subdivision new streets shall be 5.5 feet above mean sea level (USC&GS) datum. ~~This standard shall apply only to streets interior to a project.~~ 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 of development review.

~~(d) Street crown elevation for subdivisions abutting Caloosahatchee River. [deleted in its entirety]~~

**(d) (e) Caution to plan adequate elevation and drainage facilities.** ~~Many~~ Some areas of the county will may require street crown elevations far 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.**

~~With the exception of roadside swales and major drainageways, open drainageways within 100 feet of school sites shall not be permitted unless specifically approved by the board.~~ 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 of ~~development review~~.

**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 county. 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 county. 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 county attorney's office for compliance with this section.

**Sec. 10-328. Reserved. Drainage easements:**  
~~[deleted in its entirety]~~

**Sec. 10-329. Excavations.**

(a) **Applicability.** This section provides the permitting and development order requirements for ~~the construction of previously unzoned and unpermitted all excavations except: for water retention and detention.~~ The specific requirements for excavations for commercial mining excavations are specified in ch. 34, article VII, division 15, subdivision H, and are not included in this section:

- (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 defined.* Excavation, for the purposes of this section, means the excavation, 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, for use off the site or on the site from which extracted. The following activities and operations are not considered to be excavation operations and are not subject to the provisions of this section:~~

- ~~(1) Excavation, removal or storage of rock, sand, dirt, gravel, clay or other material for the purpose of constructing the foundation of a structure;~~
- ~~(2) The removal or moving of materials for construction of roads, sewer lines, storm sewers, water mains or other utilities;~~
- ~~(3) The removal or moving of materials for purposes of surface water drainage, i.e., swales, ditches, dry retention, etc.;~~
- ~~(4) The temporary removal of topsoil from a lot for landscaping purposes;~~

~~(c) *Permit required, exceptions.* It is unlawful for any person, partnership or other legal entity to engage in excavation within the unincorporated area of the county, or for an owner to permit such excavation on his property, without first having obtained the approvals and permits specified in this section.~~

~~Excavations for bona fide agricultural uses that will not result in the use of the excavated materials off-site must comply with subsections (c)(1), (3) and (4) (bank slope ratio only) below, but are not subject to any county approval process. Other excavations for bona fide agricultural uses and excavations that are accessory to one single-family residence are permitted under the following conditions:  
~~[remainder also deleted]~~~~

~~(b) (d) *Excavation types and required approvals.* Excavations are generally constructed either for mining operations, for stormwater retention or as a development site amenity. Table 2 summarizes the various types of excavations and the permits and approvals required for each excavation type. 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.

TABLE 2 [deleted; substance relocated into text]

(c) ~~(e)~~ **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 right-of-way line or easement for a collector or arterial street. The 50-foot setback may be reduced if the developer provides elements for the protection of wayward vehicles. The elements for the protection of wayward vehicles may include guardrails, berms, swales, vegetation, or other measures as determined by the director. In no event may the setback for an excavation from a collector or arterial street by less than 25 feet;
    - 2. 3. 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, ~~or~~
  - b. ~~In all cases, the most restrictive setback will apply.~~
  - b. ~~c.~~ All excavation setbacks must be measured from the mean high water (MHW) or the waterbody control elevation wet season water table (WSWT) line.
- (2) *Setbacks for buildings, accessory buildings, equipment and other structures.* All setbacks for accessory buildings or structures must be

~~shown on the site plan required as part of the application for a development order. No crusher, mixing plant, bin, tank or structure directly involved in the production process may be located less than 600 feet from any residentially zoned area or district, or 250 feet from all other nonresidential areas or zoning districts. In order to allow flexibility, the general area of any accessory buildings, structures and processing facilities may be shown on the site plan. The final placement of these buildings, structures and facilities must comply with the setbacks noted above.~~

- (2) ~~(3)~~ *Maximum excavation controlled water depth.* Excavations may not have a controlled water depth greater than 12 feet. ~~permitted under this section may not exceed 12 feet in depth and may not penetrate through any impervious soil or rock layer which presently prohibits intermingling of various watery strata. A greater depth may be permitted under this section provided that the proposed depth has been approved as a planned development rezoning deviation or as a condition of a zoning special exception approval.~~
- (3) ~~(4)~~ *Excavation bank slopes.* The design of shorelines of retention and detention areas and other excavations must be sinuous rather than straight, as described in division 6 of this article. The banks of all excavations (after reclamation, if applicable) permitted under 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 county engineer 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.
- (5) ~~Fencing.~~ A four-foot fence may be required, at the discretion of the director, to be placed around excavations for water retention when located less than 100 feet from any property under separate ownership.
- (6) *Test borings.* Test borings, when required by the division of natural resources

~~management, must be conducted in  
conformance with § 34-1677(b)(4).~~

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

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

**DIVISION 4. UTILITIES<sup>2</sup>**

**Sec. 10-351. Generally.**

(a) ~~Connections to potable Public water systems and public sewage sanitary sewer systems shall be designed and constructed in accordance with county, state, and federal standards, including the domestic requirements established by the appropriate state agency and the fire protection requirements established by the uniform county fire code, as they may be amended from time to time.~~

(b) ~~Public sewage systems shall be designed by an engineer in accordance with this chapter, and shall be designed, constructed and maintained in such a manner as not to adversely affect the water quality of any existing stream, lake or underground aquifer.~~

(c) ~~No development order shall be issued for any development for which adequate provisions for sanitary sewage disposal and potable water service have not been made. For purposes of this section, the term “adequate” shall be defined as satisfying the regulations of the state department of health and rehabilitative services and the state department of environmental regulation, as they may apply, and this chapter.~~

(d) ~~General location and installation standards are as follows:~~

- ~~(1) All treatment facilities shall be located and constructed to minimize noise, odor, and other effects and impacts on the public health, welfare, and safety.~~
- ~~(2) All aboveground or partially aboveground facilities (active or passive) shall be set back at least 100 feet from any perimeter property line.~~
- ~~(3) Belowground disposal facilities (drainfields, mound drainfields, injection wells, etc.) shall be no closer than 50 feet from the nearest residential lot.~~
- ~~(4) Location of all facilities shall be in accordance with the applicable local, state, and federal regulations.~~

<sup>2</sup>~~Cross reference(s)-Buildings and building regulations, ch. 6; zoning regulations pertaining to essential services, § 34-1611 et seq.~~

**Sec. 10-352. Connection to potable water systems.**

~~(a) Connection to central system required for certain developments. The following types of All developments, when located within the boundaries of the certificated or franchised service area of any investor- or subscriber-owned water utility, or within the county utilities’ future water service areas as defined in the Lee Plan, must connect to the town’s potable that respective water system.; [remainder of section deleted]~~

**Sec. 10-353. Connection to sanitary sewer systems generally.**

~~(a) Connection to central system required for certain developments. The following types of All developments, when located within the boundaries of the certificated or franchised service area of any investor- or subscriber-owned utility, or within the county utilities’ future sewer service areas as defined in the Lee Plan, must connect to the Lee County sanitary that respective sewer system.; [remainder of section deleted]~~

~~(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.**

~~(a) 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. [remainder of section deleted]~~

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

(a) ~~Generally.~~ (1) Water distribution and sewage collection lines shall not be installed under the paved traveled way of any major arterial or collector street except as necessary to cross under the street. Unless otherwise permitted by the town and county, department of transportation and engineering, water distribution and sewage collection lines that cross under major arterial and collector 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. ~~Water distribution lines and sewage collection lines shall not be installed in street rights-of-way or roadway easements unless the installation does not interfere with the ultimate cross section of the roadway and drainage within the right-of-way. Water distribution lines shall be located to accommodate future expansion of arterial and collector streets.~~

- (1) For all new local roads or accessways in proposed developments, a minimum ten-foot-wide utility easements shall be provided on both sides of those roads or accessways; actual width shall be determined on a case-by-case basis, so as to be accommodated within the utility easements. Water distribution lines shall be installed at the edge of the street right-of-way or street easement or outside of the right-of-way if the water distribution line will conflict with the ultimate cross section of the street.
- (2) Sewage collection lines may be installed under the traveled way of local streets. ~~Sewage collection lines shall be installed at the edge of street rights-of-way for arterial or collector streets or outside of the right-of-way if the sewage collection lines will conflict with the ultimate cross section of arterial or collector streets.~~
- (3) (2) 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 as noted in subsection (a)(1) of this section (see § 10-715).

~~(b) Extension of existing utilities. [deleted in its entirety]~~

~~(c) Easements along rear lot line. [deleted in its entirety]~~

~~(d) Easements along side lot line. [deleted in its entirety]~~

~~(e) Easements along drainage easement. [deleted in its entirety]~~

~~(f) Reduction or waiver of requirements. [deleted in its entirety]~~

**Sec. 10-356. Reserved. Maintenance and operation of water and sewer systems. [deleted in its entirety]**

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

(a) The director department of utilities shall periodically inspect all construction of water and sewage systems, ~~including systems not to be dedicated to the public.~~

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

(c) The ~~development review director,~~ at the recommendation of the department of utilities, 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 county that the improvements have been constructed substantially according to approved plans and specifications.

~~(e) Approval of completed water and sewage system improvements must be given in writing by the franchiser to the department of utilities.~~

~~(e) (f) Approved utility piping materials for use in rights-of-way are listed in § 10-716.~~

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

**DIVISION 5. FIRE SAFETY <sup>3</sup>**

**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, ~~uniform county fire code~~, as may be amended.

**Sec. 10-382. Reserved.** ~~Applicability of division. [deleted in its entirety]~~

**Sec. 10-383. Variances.** ~~Interpretation of division; conflicting provisions:~~

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.

~~(a) This division shall be construed to be the minimum regulations necessary for the purpose of meeting the general and specific requirements named in this division.~~

~~(b) Where any provision of this division imposes a restriction different from that imposed by any other provision of this chapter or any other ordinance, regulation, or law, the provision which is more restrictive shall apply.~~

~~(c) Formal interpretations on water supplies and fire department access shall be made by the county fire official.~~

**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) All industrial areas:~~

- ~~(4) (5) Hazardous storage areas (as defined in the Standard 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) through (5) 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 county fire official and the ~~district~~ fire chief official, 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 ~~for all developments in or within one-quarter mile of an existing public water system.~~ 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.** ~~Developments provided with public water system:~~

(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 ~~domestic requirements established by the appropriate state agency and the fire protection requirements established by the Florida Fire Prevention Code, uniform county fire code~~, as they may be amended.

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<sup>3</sup>Cross reference(s)--Buildings codes, and building regulations, ch. 6.



(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:

<b>TABLE 10-3. FIRE FLOWS</b>	
<b>Distance Between Buildings</b>	<b>Needed Fire Flow (gpm)</b>
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.

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

- (3) Fire flow is based on the following formula:  
 $F = 18 \text{ multiplied by } C \text{ multiplied by } A.$

<b>TABLE 10-5. CO-EFFICIENTS FOR FIRE FLOW FORMULA</b>
F =Gallons per minute flow at 20 pounds per square inch residual.
C =Constant based on type of building construction.
<b>Coefficients based on construction type:</b>
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 Standard Building Code, most current adopted edition) of all floors. Area of buildings without walls shall be calculated using building area as defined in the 1988 Standard Building Code.

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 county 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 industrial areas and~~ 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) Any water main along an arterial road or considered by the utility company to be a main transmission line shall be sized to accommodate future growth, but in no case less than specified in this section. A letter of approval from the utility company will be acceptable evidence of conformance with this requirement.~~
  - ~~(8)~~ Fire hydrants shall be located within 10 feet of the curblin of fire lanes, streets, or private streets when installed along such accessways.
  - ~~(9)~~ 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 may be acceptable 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 ~~industrial and~~ hazardous storage areas, as defined in the ~~Standard~~ building code, shall be 300 feet apart as measured along the centerline of the street.
- (4) ~~Where fire flows are provided by a public water system, 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.~~

~~Sec. 10-386. Developments not provided with public water system. [deleted in its entirety]~~

~~Sec. 10-387. Developments located outside of established fire district or taxing unit. [deleted in its entirety]~~

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

**DIVISION 6. OPEN SPACE, BUFFERING, AND LANDSCAPING <sup>4</sup>**

**Sec. 10-411. Reserved.** Purpose and applicability of division: *[deleted in its entirety]*

**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), native vegetation and areas replanted with vegetation after construction, such as natural systems, lawns, landscaped areas, and greenways, which comply with the minimum dimensional requirements of § 10-413(d);
- (2) The outdoor recreational facilities as listed in § 10-413(e)(2)e;
- (3) Bodies of water, existing or proposed, provided that they are within the proposed development area and subject to the restrictions and limitations in § 10-413(e)(2)d;
- (2) Beaches.
- (3) ~~(4)~~ 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.
- (5) Plazas, atriums, courtyards, and other similar public spaces as specified in § 10-413(e)(2)f;
- (3) Protected trees.
- (4) Landscaping of parking and vehicle use areas.
- (5) 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.*

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<sup>4</sup>*Cross reference(s)--Environment and natural resources, ch. 14; tree protection, § 14-371 et seq.; zoning regulations pertaining to environmentally sensitive areas, § 34-1571 et seq.*

**Sec. 10-413. Major indigenous plant communities of the town.** [moved from § 10-701]

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

TABLE 10-6. MAJOR INDIGENOUS PLANT COMMUNITIES				
COMMUNITIES	FLUCCS <sup>1</sup> CODE:	Sources <sup>2*</sup>		
		LONG <sup>3</sup>	WARD <sup>4</sup>	SCS <sup>5</sup>
<i>Uplands:</i>				
Shorelines	652			
Coastal strand scrub (beach/dune)	322	X	X	X
Tropical hammock hardwoods	426	X	X	X
Coastal hammock		X	X	X
Xeric oak scrub		X	X	X
Scrubby flatwoods		X	X	X
Xeric pine flatwoods		X	X	X
Mesic pine flatwoods		X	X	X
Hydric pine flatwoods		X	X	X
Hardwood pine hammock		X	X	X
Hardwood hammock		X	X	X
<i>Wetlands:</i>				
Tidal flats waters	651	X	X	
Mangroves swamps	612	X	X	X
Tidal marshes		X	X	X
Tidal flats		X		
Inland ponds/sloughs		X		
Submergent/emergent		X		
Aquatic marsh		X	X	X
Cypress swamp		X	X	X
Hardwood swamp		X	X	X
Wet prairie		X	X	X
Intermittent ponds		X		
Cypress-pine		X		

*\*Due to the extraordinary number of species of indigenous grasses, herbaceous and woody plants, and trees that are indigenous to Southwest Florida, each species cannot be listed in this section. The following sources, which are referenced in the table in this section, contain the names of those describes the types of indigenous plant species recognized as characteristic of each represented plant community: <sup>1</sup>Florida Land Use, Cover and Forms Classification System, 1999, Department of Transportation, Surveying and Mapping, Geographic Mapping Section, State Topographic Bureau, Thematic Mapping Section.  
<sup>2</sup>A Flora of Tropical Florida, Robert W. Long and Olga Lakela.  
<sup>3</sup>Rare and Endangered Biota of Florida, Volume Five--Plants, edited by Daniel B. Ward.  
<sup>4</sup>26 Ecological Communities of Florida, Soil Conservation Service.*

(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. Buffers.**

(a) Industrial and commercial developments that adjoin existing residential developments must include a buffer of no less than 15 feet in width adjacent to all residential uses and property lines. The buffer must contain a fence, or wall, or berm that is no less than 8 feet in height, as 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 (see § 34-2172). Visibility through any fence installed pursuant to this section may not exceed 25 percent when viewed at right angles. No less than 5 trees per 100 linear feet must be planted in the buffer area on the residential side of the visual screen.

(b) All sewage treatment plants must include a buffer of no less than 30 feet in width along all property lines. The buffer must contain a fence, wall, or berm that is no less than 8 feet in height, as measured using subsection (a) above. Visibility through any fence installed pursuant to this section may not exceed 25 percent when viewed at right angles. No less than 6 trees per 100 linear feet must be planted outside of the visual screen.

(c) [moved to § 416(c)(4)]

(d) [moved to § 416(c)(6)]

(e) When a fence or wall is proposed, but is not required, the fence or wall must be located so that all required trees and shrubs are planted on the outside of the fence or wall and are visible from the abutting property or street.

(f) [moved to § 416(c)(7)]

(g) [moved to § 416(c)(9)]

(h) ~~Ownership, preservation, and maintenance of buffer areas. Ownership, preservation, and maintenance of required buffer areas must be in accordance with § 10-417.~~

**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).

**Sec. 10-4153. Open space.**

(a) *Planned development districts.* For any development zoned RPD, MHPD, RVPD, CPD, CFPD, IPD, AOPD or MPD, the open space required must be consistent with the adopted master concept plan for that development and the open space requirements for that zoning district, in addition to the requirements of this division, unless specific deviations from this division have been granted.

(a) ~~(b)~~ All development must maintain, contain, at a minimum, the percentage of open spaces outlined in the table below:

<b>TABLE 10-7 REQUIRED OPEN SPACE</b>	
<i>Type of Open Space</i>	<i>Amount of This Type to be Maintained</i>
<u>Indigenous plant communities – wetlands</u>	<u>100% – see subsection (b)(1)</u>
<u>Indigenous plant communities – coastal scrub (beach/dune)</u>	<u>100% plus 50-foot buffer for new lots – see subsection (b)(2)</u>
<u>Indigenous plant communities – other uplands</u>	<u>50% – see subsection (b)(3)</u>
<u>Beaches</u>	<u>see subsection (c)</u>
<u>Archaeological and historical sites</u>	<u>see subsection (d)</u>
<u>Protected trees</u>	<u>see subsection (e)</u>
<u>Landscaping of parking and vehicle use areas</u>	<u>see subsection (f)</u>
<u>Perimeter buffers</u>	<u>see subsection (g)</u>

<i>Type of Development</i>	<i>Open Space as Percentage of Development Area</i>
<del>Single-family detached or two-family dwelling units erected on individual lots</del>	<del>none</del>
<del>Other residential</del>	<del>35 percent small projects 40 percent large projects</del>
<del>Commercial, public, and quasi-public [see section 10-414(c)]</del>	<del>20 percent small projects 30 percent large projects</del>
<del>Industrial</del>	<del>10 percent small projects 20 percent large projects</del>
<del>Multiple use</del>	<del>Each individual use must comply with requirements in this table</del>

~~(b) (c) *Indigenous plant communities. native vegetation.* The major indigenous plant communities in the town are listed in § 10-413. Dune vegetation is 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 consists 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 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.*~~
  - ~~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 edge of the primary dune and any 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.~~
- ~~(1) *For large developments with existing indigenous native vegetation, at least 50 percent of the required open space area must be designed to preserve the existing indigenous native vegetation. Refer to § 10-701.*~~
- ~~(2) *As an incentive to preserve indigenous native upland plant communities in large tracts, an open space credit equal to 125 percent of the preserve area will be granted. The minimum size of any single preserve area eligible for this credit will be one acre with a minimum average dimension of 75 feet.*~~

(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.

(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).
- (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). 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(b). 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.

(d) **Minimum dimensions:**

- (1) The minimum average width of open space areas must be 10 feet.
- (2) The minimum area of open space must be 180 square feet.
- (3) Indigenous open space areas ([see §] 10-413(c)) must have a minimum average width of 20 feet and minimum area of 400 square feet.

(e) **Use of open space:**

- (1) Open space areas must be landscaped in accordance with § 10-416.
- (2) The following uses may contribute to the open space requirements provided the minimum dimensions are met:
  - a. ~~Buffers:~~
  - b. ~~Landscaped areas in off-street parking areas, except for landscaped areas reserved for future parking spaces pursuant to § 34-2017(d).~~
  - c. ~~Dry detention areas:~~
  - d. ~~Existing or proposed bodies of water, including stormwater management areas and areas subject to saltwater inundation, which may be used to offset up to a maximum of 25 percent of the required open space area:~~
  - e. ~~Active and passive recreation areas such as playgrounds, golf courses, beach frontage, native trails, bikeways, pedestrian ways, and other similar open spaces, as long as not more than 25 percent of the total open space area consists of impervious surface:~~
  - f. ~~Outdoor active and passive public use areas such as plazas, atriums, courtyards, and other similar public spaces, which may be used to offset up to a maximum of 20 percent of the required open space:~~
  - g. ~~Archaeological sites or zones that are designated as significant historic resources pursuant to ch. 22.~~

(f) **Maintenance of provided open space:**  
[deleted in its entirety]

**Sec. 10-4165. Landscaping standards.**

(a) Tree planting required. Generally. Except in the DOWNTOWN and SANTINI zoning districts, landscaping for all new developments; except community and regional parks as defined in the Lee Plan, must include, at a minimum, the following number of trees; 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 and an alternative landscape betterment plan (see § 10-419).

- (1) ~~Single-family detached and two-family residential developments.~~ One tree must be provided per 3,000 square feet of development area, which must include a minimum of two trees per single-family lot installed prior to issuance of the certificate of occupancy.
- (2) ~~Recreational vehicles and mobile homes (RV/MH).~~ One tree must be provided per 3,000 square feet of development area.
- (3) ~~Multiple-family developments.~~ One tree per 3,000 square feet of development area, plus 5 trees per 100 linear feet for each lot line that abuts existing single-family or two-family residential developments.
- (4) ~~All other developments.~~ One tree must be provided per each 3,500 square feet of development area. No more than 50 percent of the required trees may be located in the area between the rear lot line and a line created by extending the rear wall of the principal structure (defined as the wall closest to, and running roughly parallel to, the rear lot line) to the side lot lines for lots fronting on a single street. Where lots front on two streets, no more than 50 percent of the required trees may be located in the area between the rear lot line and the line created by extending the rear wall of the principal structure to the side lot line and the street right-of-way line.

~~(b) Landscaping adjoining street. [deleted in its entirety]~~

(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) Buffers. [deleted in its entirety]~~
- (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 ~~indigenous~~ 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 (b)(2)~~ef~~ 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. For large developments only, each row of parking spaces must be terminated by landscaped islands which measure not less than 5 feet in width and not less than 18 feet in length. Curbing is strongly encouraged. If terminal islands are used~~

~~for required canopy trees, they must be a minimum of 10 feet in width.~~

- ~~e.~~ f. 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.~~ g. 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 is are not appropriate landscape materials.
  - ~~g.~~ h. 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. ~~Free grating areas may not count towards required internal open space.~~
- (3) Consistent with § 14-78(e), 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) *Function.* Landscaping is to mimic the function of natural systems. Refer to § 10-418.



(c) **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 § 10-413) 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).

- (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.

<b>TABLE 10-9. BUFFER TYPES (per 100 linear feet)</b>						
<b>Buffer types:</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<i>Minimum width in feet</i>	5	15	15	15	25	30
<i>Minimum # of trees</i>	4	5	5	5 <sup>3</sup>	5	10
<i>Minimum # of shrubs</i>	=	Hedge <sup>2</sup>	18	Hedge <sup>2</sup>	30	Hedge <sup>2</sup>
<i>Wall required<sup>1</sup></i>	No	No	Yes	No	Yes	No
<b>Notes:</b>						
<sup>1</sup> <i>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.</i>						
<sup>2</sup> <i>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.</i>						
<sup>3</sup> <i>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.</i>						

<b>TABLE 10-8. BUFFER REQUIREMENTS</b>				
<i>Proposed uses</i>	<i>Existing (or zoned) uses</i>			
	<b>SF-R</b>	<b>MF-R</b>	<b>PRKG</b>	<b>ROW</b>
<b>MF-R</b>	<b>B</b>	=	=	=
<b>COM</b>	<b>C/F</b>	<b>C/F</b>	=	=
<b>PRKG</b>	<b>C/F</b>	<b>C/F</b>	=	<b>D</b>

- (4) ~~(c)~~ 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 ~~the buffer described in subsection (a) above~~ if, in the absence of such a buffer, the proposed development will have a significantly adverse impact on adjacent existing residential uses. *[moved from 10-414(c)]*
- (5) Easements. Buffer areas may not be located on any portion of an existing or dedicated street right-of-way or roadway easement. Variations or deviations from this requirement are prohibited.
- (6) ~~(d)~~ Vehicle visibility. ~~All fences, Walls, berms, plants, or other landscape features and buffer plantings must not be placed so as to not they violate the requirements of § 34-3131 (vehicle visibility) requirements of § 34-662(b)(4). of the land development code. 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 the SFWMD requirements.~~ *[moved from 10-414(d)]*
- (7) ~~(f)~~ Development abutting natural bodies of waterway. Except where a stricter standard applies for the Greater Pine Island Area (defined in ch. 34 of the land development code),
  - a. There must be a 25-foot wide buffer landward from the mean high water line of all nonseawalled natural bodies of waterways., as defined in ch. 34, except those portions of a shoreline having a seawall or retaining wall. ~~Where a proposed planned development or subdivision is located in the Greater Pine Island Area adjoining state-designated aquatic preserves and associated natural tributaries, the width of the required buffer will be 50 feet. No deviation or variance from these requirements will be permitted except under circumstances in which the requirement would have the effect of prohibiting all reasonable use of the property.~~
- b. Existing vegetation within the buffer area must be retained. The except for the removal or control of exotic pest plants: Removal of such plants may must not involve the use of heavy mechanical equipment such as bulldozers, draglines, front end loaders, or hydraulic excavators, unless approved at the time of development order and tractors. ~~Where the use of heavy equipment may disturb native vegetation, the approval of the director must be obtained.~~ *[moved from 10-414(f)]*
- (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.
- (9) ~~(g)~~ Use of buffer areas. Required buffers yards may be used for passive recreation facilities such as pedestrian; or bike paths , or equestrian trails, provided that:
  - a. ~~(1)~~ No required trees or shrubs are eliminated;
  - b. ~~(2)~~ Not more than 20 percent of the width of the buffer is impervious surface;
  - c. ~~(3)~~ The total width of the buffer area is maintained; and
  - d. ~~(4)~~ All other requirements of this chapter are met. *[moved from 10-414(g)]*

**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.** Stormwater ponds:  
*[deleted in its entirety]*

**Sec. 10-419. Alternate landscape betterment plan.**

Applications pursuant to this division ~~are will be~~ 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 may not deviate from the minimum open space requirements of this section.~~
- (1) (2) 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) (3) 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, ~~no all~~ substituted tree ~~will~~ must be no less than 3 inches in diameter at 12 inches ~~3 feet~~ above the ground, or less than ~~10~~ 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 demonstrate water conservation through implementation of a comprehensive xeriscape planting and irrigation plan.~~
- (4) (5) The plan must designate the botanical name (genus and species) and location of all plant material to be installed.
- (5) (6) The proposed alternate landscape betterment plan may ~~not be approved~~ denied if the director staff determines that the intent of the minimum requirements of these provisions are ~~this division is not~~ being exceeded.

**Sec. 10-420. Plant material standards.** ~~416. Size and type of vegetation; credits.~~

~~(a) (b) *Quality of plant materials.*~~ Plant materials used to meet the requirements in conformance with the provisions of this division must meet conform to the standards for Florida No. 1 or better, as given set out in Grades and Standards for Nursery Plants, 1973, and Grades and Standards for Nursery Plants, Parts I and II, Florida Department of Agriculture and Consumer Services, Tallahassee. Root ball sizes on all transplanted plant materials must also meet state standards.

~~(b) (a) *Size of plant materials; Use of native varieties.*~~ Planting schedules for projects receiving a final development order on or after November 17, 1986, must specify that At least 75 percent of the total number of required trees used in buffers and landscaping must be indigenous native varieties; and 50 percent of the total number of required shrubs used to fulfill these requirements must be native Florida species. in buffers and landscaping must be indigenous native varieties. All trees and shrubs provided in accordance with any requirement of this division must comply with the following standards:

~~(c) (1) *Trees and palms.*~~ [existing text deleted]

(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) (2) *Shrubs and hedges.*~~ Shrubs required under § 10-415(b)(1) must be a minimum of 36 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. Unless a vegetative hedge is installed, shrubs required under § 10-415(b)(2) must be a minimum of 18 inches in height at the time of planting. In areas where vehicular sight distance is required, shrubs within the line of sight may not restrict vision.

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

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

(h) ~~(d)~~ **Credits for tree preservation.** ~~(h)~~ Except for prohibited species as listed above in subsection (d) of this section, every consideration must ~~will~~ be given to retaining as much of the existing plant material as possible may already be present on the site.

- (1) ~~(2)~~ Each existing indigenous native tree preserved in place which has a trunk diameter of 4 inches or greater measured at 4½ feet above the ground ~~(dbh)~~ will receive a credit of 5 trees against the general landscape tree planting requirements of § 10-416(a).
- (2) Native palms preserved in place which are 6 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 count internally in parking areas or buffer yards unless such trees remain in those 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 segment.
- (6) ~~Refer to § 10-414(c).~~ These 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 CC., they must be replaced by the number of credit trees taken.
- (7) ~~(3)~~ These Credits will apply where the preserved tree is in a barricaded an undisturbed 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 indigenous native pine trees, the barricaded undisturbed 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.
  - i. 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. ~~In the case of individual trees, barricades must be erected no closer than the dripline of the trees, except where construction limits have been approved to a closer distance.~~

- b. For all other protected vegetation, i.e., 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.** ~~417. Preservation of street trees; installation of plant materials; maintenance of landscaping and open space.~~

~~(a) *Preservation of street trees.* Street right-of-way trees with a trunk diameter of greater than 24 inches measured at 4 ½ feet above the ground (dbh) must be preserved whenever possible, and the street must be designed to protect and encourage healthy growth.~~

~~(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; protection from encroachment.* (1) All landscape materials must be installed in a recognized horticulturally correct manner. At a minimum, the following installation requirements must be met:~~

- ~~(2) The exact placement of required plants and structures will be the decision of each developer, except that the following requirements must be satisfied:~~
  - ~~a. Clustering of shrubs is encouraged to maximize their chances of survival and visual effect.~~
  - ~~b. All buffer areas and landscaped strips must be mulched, seeded, sodded, or planted with ground cover unless vegetative cover is already established.~~
- ~~(1) All landscaped areas must be mulched unless vegetative cover is already established.~~
- ~~(2) c. Trees and shrubs used in buffers or required landscaped strips adjoining streets must be planted in a minimum width planting strip areas equal to one-half the required width of the buffer or landscaped strip.~~

However, in no case may the planting area be less than 5 feet in width.

- (3) ~~d~~: All landscaped areas must be provided protection from encroachment by any type of ~~parked or moving vehicle, boat, mobile home, travel trailer or heavy construction equipment.~~
- (4) ~~e~~: 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. ~~If irrigation systems are used, they must be designed to operate only when needed, and only in those areas which require irrigation.~~
- (5) ~~f~~: Utility, ~~power~~, or drainage easements may overlap required ~~landscaped strips or buffers~~; however, no required ~~buffer trees or shrubs~~ may be located in any utility, ~~drainage, power~~, 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 property owner is responsible for maintaining the maintenance of all landscaped areas required landscaping by this division 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. Trees required by this division may not be trimmed or pruned in such a way so as to alter or limit their normal mature height or crown spread. If planted or preserved landscape materials should die, they must be replaced within 60 days.~~

(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) and be in accordance with “Tree, Shrub and Other Woody Plant Maintenance – Standard Practices” (ANSI A300-1995, available from the National Arborist Association). 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.

*(d) Ownership, preservation and maintenance of open space and buffers: [deleted in its entirety]*

**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~~0~~. Restoration standards for indigenous plant communities native vegetation removed without approval.**

~~A restoration plan based on the minimum standards set out in this division section will be required if indigenous plant communities have native vegetation has 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 indigenous 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 are wholly or partially within one-half mile of a public transit route, as shown in the mass transit element of the Lee Plan, and which meet or exceed one of the thresholds set forth in this division;~~ shall be required to provide public transit facilities as set out in this division.

**Sec. 10-442. Required facilities.**

~~(a) Residential developments exceeding 100 living units and commercial establishments exceeding 10,000 with less than 30,000 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.~~

~~(b) Residential developments exceeding 500 living units and commercial establishments with 30,000 square feet or more of total floor area 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, as well as a bicycle storage rack.~~
- ~~(2) If there is no bus stop within one-fourth mile and the property abuts the bus route, the developer shall provide for a bus stop, including a shelter, signage, walkways, bicycle rack and lighting and a bus pull-off area so passengers can get on or off the bus out of the line of traffic.~~

**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) Where the proposed right-of-way is greater than the existing right-of-way to the extent that the construction of the facilities prior to the road widening is not practical, the developer may post a security with the director of Lee Tran for the cost of constructing or erecting the facilities.~~

~~(b) (c) The director of zoning and development services 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 <sup>5</sup>**

**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 county 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** ~~Degradation~~ 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.

~~Game commission [deleted]~~

**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.

**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.

**Lee County Listed species** means any plant or animal (vertebrate) species found in the town county that are endangered, threatened, ~~or~~ 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, appendix H. The bald eagle (*Haliaeetus leucocephalus*) is excluded as long as ch. 14, article III, ~~division 3~~, relating to bald eagle nesting habitat, is in effect in the county. 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 game commission.

~~Mitigation park [deleted]~~

**Occupied habitat buffer area:** means occupied habitat, the dimensions of which coincide with the recommended buffer guidelines established in Table 10-10 §10-719 and § 10-474(b).

<sup>5</sup>Cross reference(s)—Sea turtle conservation, § 14-71 et seq.; southern bald eagle protection, § 14-111 et seq.; Environment and natural resources, ch. 14, wildlife and habitat protection, § 14-41 et seq.; zoning regulations pertaining to environmentally sensitive areas, § 34-1571 et seq.

**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 ~~Lee County~~ 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 ~~Lee County~~ 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, ~~except as set forth in subsection (d) of this section.~~ The management plan is subject to final approval by the director.

(c) Surveys and management plans are not required for ~~small developments on less than one acre of land, except for properties rezoned to planned development (PD) or planned unit development (PUD) prior to September 1, 1989 and for property subject to a preliminary development orders issued prior to September 1, 1989. Any new rezoning activity or master concept plan vacation eliminates prior PUD or planned development zoning exemptions from species survey and~~

~~management plan requirements. The director may waive survey and management plan requirements if the director deems that prior surveys and management plans are adequate.~~

~~(d) Management plans are not required for any final development order application if the preliminary development order was issued prior to September 1, 1989, and the final development order application does not substantially deviate from the preliminary development order.~~

~~(d) (e)~~ 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 ~~§ 10-719~~ except where off-site mitigation is permitted accordance with § 10-475. In the event the FWC game commission has already established the size and dimensions of an occupied habitat buffer area, those boundaries will supersede the distances shown in Table 10-10. ~~§ 10-719.~~

(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 county 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 county 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 county 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) ~~Required occupied habitat buffer areas may be used to fulfill any applicable minimum open space requirements at a ratio of one unit habitat and habitat buffer to 1.5 unit required open space (1:1.5). In no event will this credit be interpreted to reduce any required occupied habitat buffer area.~~
- (2) ~~Those single-family Developments which consist solely of conventional single-family dwelling units on lots of no less than 6,500 square feet and do not have an open space requirement will be exempt from division 6 of this article, pertaining to open space, buffering and landscaping, except for the minimum buffer requirements; so long as the applicant preserves occupied habitat buffer areas consisting of no less than 10 percent of the development area.~~

(2) ~~(3) To the extent that occupied habitat buffer areas exceed applicable minimum open space requirements after the use of the above-described ratio, or as in subsection (e)(2) above~~ exceed 10 percent of the development area, the town county 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) Purchase of conservation easement for Florida panther or Florida black bear. The county must either purchase a conservation easement or a fee simple interest in occupied habitat for the Florida panther or the Florida black bear or permit development to encroach in such areas.~~

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

~~(h) When determination made without FWC game commission expertise.~~ If the FWC game commission fails to review any plan in conjunction with county staff's allotted time regular review schedules, determinations will be made without the benefit of FWC game commission expertise.

~~(i) 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.

~~(j) 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 game commission.

(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 county.

~~Sec. 10-476. Variance procedures and appeals.~~

~~(a) Requests for variances from the terms of this division will be administered and decided in accordance with the requirements for variances set forth in ch. 34.~~

~~(b) Any decision made by the director or his designee may be appealed under the procedures set forth in ch. 34 for appeals of administrative decisions.~~

**Secs. 10-476--10-560. Reserved.**

~~DIVISION 9. SIX MILE CYPRESS WATERSHED  
[deleted in its entirety]~~

~~Secs. 10-511--10-530. Reserved.~~

~~DIVISION 10. LAKES  
REGIONAL PARK WATERSHED  
[deleted in its entirety]~~

~~Secs. 10-542--10-600. Reserved.~~

**TABLE 10-10. APPENDIX H. LEE COUNTY LISTED SPECIES**

<i>Scientific Name</i>	<i>Common Name</i>	<i>FLUCCS</i>	<i>Month Beginning</i>	<i>Month Ending</i>	<i>Rec. Buffer Guide-lines (ft)</i>	<i>Buffer For</i>	<i>Aspects to be Included in Survey</i>
<b>**1. REPTILES</b>							
<i>Alligator mississippiensis</i>	<b>American alligator</b>	500 series, 610, 621, 630, 641, 653			500	Nest	Nests, sunning areas
<i>Caretta caretta</i>	<b>Loggerhead turtle</b>	<i>- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -</i>					
<i>Chelonia mydas</i>	<b>Green turtle</b>	<i>- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -</i>					
<i>Crocodylus acutus</i>	<b>American crocodile</b>	642, 651			500	Nests	Nests, sunning areas
<i>Dermochelys coriacea</i>	<b>Leatherback turtle</b>	<i>- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -</i>					
<i>Drymarchon corais couperi</i>	<b>Eastern indigo snake</b>	320 series, 411, 412, 414, 421, 425, 426, 427, 428			150	Gopher tortoise burrows	Burrows, feeding
<i>Eretmochelys imbricata</i>	<b>Hawksbill turtle</b>	<i>- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -</i>					
<i>Gopherus polyphemus</i>	<b>Gopher tortoise</b>	320 series, 411, *412, 421, 426, 427, 432, 743			150	Burrows	Burrows, feeding
<i>Lepidochelys kempii</i>	<b>Kemp's ridley turtle</b>	<i>- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -</i>					
<i>Malaclemys terrapin</i>	<b>Diamondback terrapin</b>	612, 640, 651, 652, 710			150	Nests	Nest, sunning areas
<i>Rana areolata</i>	<b>Gopher frog</b>	320 series, 411, 412, 421, 426, 560, 620, 630			150	Gopher tortoise burrows	Burrows, feeding paths to wetlands
<b>**2. BIRDS</b>							
<i>Ajaia ajaja</i>	<b>Roseate spoonbill</b>	500 series, 612, 642, 652, 653, 654			250	Feeding	Feeding
<i>Aphelocoma coerulescens</i>	<b>Florida scrub jay</b>	412, 421, 432			500	Nest	Feeding, nests
<i>Aramus guarauna</i>	<b>Limpkin</b>	500 series, 617, 621, 630, 641, 643			150	Nests	Feeding (harbor apple snails), nests
<i>Athene cunicularia floridana</i>	<b>Burrowing owl</b>	191, 192, 310			150	Burrows	Burrows

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<i>Scientific Name</i>	<i>Common Name</i>	<i>FLUCCS</i>	<i>Month Beginning</i>	<i>Month Ending</i>	<i>Rec. Buffer Guide-lines (ft)</i>	<i>Buffer For</i>	<i>Aspects to be Included in Survey</i>
<i>Charadrius alexandrinus tenirostris</i>	<b>Southeastern snowy plover</b>	651, 652, 710			250	Nests	Nests, feeding
<i>Charadrius melodus</i>	<b>Piping plover</b>	651, 652, 710	Dec.	May	250	Nests	Nest, feeding
<i>Egretta caerulea</i>	<b>Little blue heron</b>	500 series, 600 series			250	Nests	Nests, feeding
<i>Egretta rufescens</i>	<b>Reddish egret</b>	500 series, 610, 640, 650			250	Nests	Nests, feeding
<i>Egretta thula</i>	<b>Snowy egret</b>	500 series, 600 series			250	Nests	Nests, feeding
<i>Egretta tricolor</i>	<b>Tricolored heron</b>	500 series, 600 series			250	Nests	Nests, feeding
<u><i>Eudocimus albus</i></u>	<b>White ibis</b>	<u>650, 651, 652</u>			<u>250</u>	<u>Nests</u>	<u>Nests, feeding</u>
<i>Falco peregrinus tundrius</i>	<b>Arctic peregrine falcon</b>	620, 650	Sept.	April	150	Feeding	Feeding
<i>Falco sparverius paulus</i>	<b>Southeastern American kestrel</b>	321, 411, 435	March	July	500	Nests	Nests, feeding
<i>Grus canadensis pratensis</i>	<b>Florida sandhill crane</b>	( <del>211, 212</del> )**, 310, 321, 641			500	Nests	Nests, feeding
<i>Haematopus palliatus</i>	<b>American oystercatcher</b>	651, 652, <u>654</u> , <del>645</del> , 710			250	Nests	Nests, feeding
<u><i>Haliaeetus leucocephalus</i></u>	<b>Bald eagle</b>	<u>- for bald eagles, the special regulations in §§ 14-111 through 14-290 supersede the provisions of ch. 10, division 8</u>					
<i>Mycteria americana</i>	<b>Wood stork</b>	560, 610, 621, 630, 640, 650			500	Nests	Nests, feeding
<i>Pelecanus occidentalis</i>	<b>Brown pelican</b>	612, 650			250	Nests	Nests
<i>Picoides borealis</i>	<b>Red-cockaded woodpecker</b>	411			750	Nests	Nests, feeding
<i>Polyborus plancus audubonii</i>	<b>Audobon's crested caracara</b>	321, 428			750	Nests	Nests, feeding
<i>Rostrhamus sociabilis</i>	<b>Snail kite</b>	520, 641, 643			250	Feeding	Feeding (harbor apple snails areas)
<u><i>Rynchops niger</i></u>	<b>Black skimmer</b>	<u>191, 261, 650, 651, 652</u>			<u>250</u>	<u>Nests</u>	<u>Nests, feeding</u>
<i>Sterna antillarum</i>	<b>Least tern</b>	191, 261, 651, 652	April	Sept.	250	Nests	Nests, feeding

**TABLE 10-10. APPENDIX H. LEE COUNTY LISTED SPECIES**

<i>Scientific Name</i>	<i>Common Name</i>	<i>FLUCCS</i>	<i>Month Beginning</i>	<i>Month Ending</i>	<i>Rec. Buffer Guide-lines (ft)</i>	<i>Buffer For</i>	<i>Aspects to be Included in Survey</i>
<i>Sterna douballii</i>	<b>Roseate tern</b>	651, 652, 710	Jan.	April	250	Feeding	Feeding
<b>**3. MAMMAL</b>							
<i>Felis concolor coryi</i>	<b>Florida panther</b>	(211)***, 212, 411, 414, 425, 427, 428, 434, 617, 621, 624, 630			750	Dens	Dens, feeding
<i>Mustela vison evergladensis</i>	<b>Everglades mink</b>	500 series, 620, 630, 641, 643			250	Dens	Dens, feeding
<i>Sciurus niger avicennia</i>	<b>Big Cypress fox squirrel</b>	411, 610, 620			125	Nests	Nests, feeding
<i>Ursus americanus floridanus</i>	<b>Florida black bear</b>	321, 411, 414, 425, 427, 428, 438, 612, 617, 621, 624, 630			750	Dens	Dens, feeding
<b>**4. PLANTS</b>							
<i>Acanthocereus tetragonus</i>	<b>Barbwire cactus; Dildoe cactus</b>	<u>322, 426, 743</u>			<u>10</u>	<u>Plant</u>	<u>Sighting</u>
<i>Acrostichum aureum</i>	<b>Golden leather fern</b>	<u>612, 641, 642</u>			<u>10</u>	<u>Plant</u>	<u>Sighting</u>
<i>Amaranthus floridanus</i>	<b>Florida amaranth</b>	<u>322, 710, 740</u>			<u>10</u>	<u>Plant</u>	<u>Sighting</u>
<i>Asclepias curtissii</i>	<b>Curtis milkweed</b>	320 series			10	Plant	Sighting
<i>Burmammia flava</i>	<b>Fakahatchee burmannia</b>	320 series, 411, 412			10	Plant	Sighting
<i>Celosia nitida</i>	<b>West Indian cock's comb</b>	<u>426, 743</u>			<u>10</u>	<u>Plant</u>	<u>Sighting</u>
<i>Celtis iguanaea</i>	<b>Iguana hackberry</b>	322, 426			10	Plant	Sighting
<i>Celtis pallida</i>	<b>Spiny hackberry; Desert hackberry</b>	322, 426			10	Plant	Sighting
<i>Harrisia aboriginum</i> <i>Cereus gracilllis</i>	<b>Prickly applecactus; West coast prickly-apple</b>	<u>322, 426, 612, 743</u>			10	Plant	Sighting
<i>Chrysophyllum olivaeforme</i>	<b>Satinleaf</b>	411, 426			10	Plant	Sighting

**TABLE 10-10. APPENDIX H. LEE COUNTY LISTED SPECIES**

<i>Scientific Name</i>	<i>Common Name</i>	<i>FLUCCS</i>	<i>Month Beginning</i>	<i>Month Ending</i>	<i>Rec. Buffer Guide-lines (ft)</i>	<i>Buffer For</i>	<i>Aspects to be Included in Survey</i>
<i>Deeringothamnus pulchellus</i>	<b>Beautiful pawpaw</b>	321, 411			10	Plant	Sighting
<i>Encyclia tampensis</i>	<b>Florida butterfly orchid</b>	322, 426, 427, 428, 612			10	Plant	Sighting
<i>Eragrostis tracyi</i>	<b>Sanibel love grass</b>	710			10	Plant	Sighting
<i>Erondia littoralis</i>	<b>Golden creeper</b>	322			10	Plant	Sighting
<i>Gossypium hirsutum</i>	<b>Wild cotton</b>	611			10	Plant	Sighting
<i>Gymnopogon brevifolius</i>	<b>Shortleaf skeleton grass</b>	426, 427, 428			10	Plant	Sighting
<i>Helianthus debilis subsp. vestitus</i>	<b>West coast dune sunflower</b>	322, 710			10	Plant	Sighting
<i>Jacquina keyensis</i>	<b>Joewood</b>	322, 426			10	Plant	Sighting
<i>Maytenus phyllanthoides</i>	<b>Florida mayten</b>	322, 612, 743			10	Plant	Sighting
<i>Myrcianthes fragrans var. simpsonii</i>	<b>Twinberry; Simpson's stopper</b>	426, 427, 428			10	Plant	Sighting
<i>Ophioglossum palmatum</i>	<b>Hand-adder's tongue fern</b>	427			10	Plant	Sighting
<i>Opuntia stricta</i>	<b>Erect pricklypear</b>	322, 426, 612, 710, 743			10	Plant	Sighting
<i>Paspalidium chapmanii</i>	<b>Coral panicum</b>	322, 743			10	Plant	Sighting
<i>Rayjacksonia phyllocephala</i>	<b>Camphor daisy</b>	612, 642			10	Plant	Sighting
<i>Scaevola plumieri</i>	<b>Inkberry; Beachberry; Gullfeed</b>	322, 710			10	Plant	Sighting
<i>Stenaria nigricans; Heydotis nigricans</i>	<b>Diamond flowers</b>	322, 740			10	Plant	Sighting
<i>Suriana maritima</i>	<b>Bay cedar</b>	322, 741, 743			10	Plant	Sighting
<i>Tillandsia balbisiana</i>	<b>Reflexed wild-pine; Northern needleleaf</b>	322, 426, 427, 428, 612			10	Plant	Sighting



**TABLE 10-10. APPENDIX H. LEE COUNTY LISTED SPECIES**

<i>Scientific Name</i>	<i>Common Name</i>	<i>FLUCCS</i>	<i>Month Beginning</i>	<i>Month Ending</i>	<i>Rec. Buffer Guidelines (ft)</i>	<i>Buffer For</i>	<i>Aspects to be Included in Survey</i>
<i>Tillandsia fasciculata</i> <i>var. densispica</i>	<b>Stiff-leaved wild-pine;</b> <b>Cardinal air plant</b>	322, 426, 427, 428, 612			10	Plant	Sighting
<i>Tillandsia flexuosa</i>	<b>Banded wild-pine;</b> <b>Twisted air plant</b>	322, 426, 427, 610 612			10	Plant	Sighting
<i>Tillandsia utriculata</i>	<b>Giant wild-pine;</b> <b>Giant airplant</b>	322, 426, 427, 428, 612			10	Plant	Sighting
<i>Zamia floridana</i> , <i>Zamia integrifolia</i>	<b>Florida coontie;</b> <b>Florida arrowroot</b>	320 series, 411, 412, 421, 426			10	Plant	Sighting
<p>*Mesic and xeric 411 only.      **Only when associated with vegetated nonforested wetlands.      ***Only when associated with large adjacent woodlands.</p>							

**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.

**ARTICLE IV. ILLUSTRATIONS,  
TABLES, and DIAGRAMS**

~~Sec. 10-719. Designated status of animal and plant species. [deleted in its entirety]~~

~~Sec. 10-720. Driveway permit requirements. [text moved to § 10-296(o)]~~

~~Sec. 10-701. Major indigenous plant communities of the county. [text and table moved to § 10-413]~~

~~Sec. 10-702. Corner lots. [deleted in its entirety; subject addressed in ch. 34]~~

~~Sec. 10-703. Lot depth. [deleted in its entirety; subject addressed in ch. 34]~~

~~Sec. 10-704. Types of lots and lot lines. [deleted in its entirety; subject addressed in ch. 34]~~

~~Sec. 10-705. Reserved.~~

~~Sec. 10-706. Minimum specifications for bridge improvements. [deleted in its entirety]~~

~~Sec. 10-707. Four- and six-lane arterial roadways. [deleted in its entirety]~~

~~Sec. 10-708. Collector streets. [deleted in its entirety]~~

~~Sec. 10-709. Public local streets. [subject moved to § 10-296]~~

~~Sec. 10-710. Private local streets. [subject moved to § 10-293]~~

~~Sec. 10-711. Access streets. [deleted in its entirety]~~

~~Sec. 10-712. Recommended underdrain details. [deleted in its entirety]~~

~~Sec. 10-713. Street intersections. [subject moved to § 10-296]~~

~~Sec. 10-714. Culs-de-sac. [subject moved to § 10-296]~~

~~Sec. 10-715. Utility placement in local streets. [deleted in its entirety]~~

~~Sec. 10-716. Piping materials for use in right-of-way. [subject moved to § 10-296]~~

~~Secs. 10-717, 10-718. Reserved.~~