

Mayor David Browning, Seat 4
Vice Mayor Ronald D. Jarriel, Seat 1
Council Member Tom Goltzené, Seat 5
Council Member Ryan Liang, Seat 3
Council Member Jim Rockett, Seat 2



TOWN OF LOXAHATCHEE GROVES
Unified Land Development Code Review Committee
Thursday, August 15, 2013 at 5:30 p.m.
Central Palm Beach County Chamber of Commerce
13901 Southern Blvd., Loxahatchee, Florida 33470

Committee Chairman Virginia Standish
Committee Vice Chairman Katie Davis
Committee Member Beck Hyslop
Committee Member John Ryan
Committee Member Howard Voren

Town Manager Mark Kutney
Town Clerk Susan Eichhorn
Town Planning Consultant Jim Fleischmann
Town Planning Technician Braeden Garrett

TENTATIVE
SUBJECT TO REVISION

PUBLIC NOTICE/AGENDA

Public Comment will be taken after each Agenda item

1. OPENING

- a. Call to Order – *Chair Standish*
- b. Roll Call – *Town Clerk Eichhorn*
- c. Approval of Agenda

2. MINUTES: Approval of ULDC Review Committee Minutes for: July 18, 2013

3. REGULAR AGENDA

a. Old Business

1. Update and Discussion Regarding Food Insurance Rate Maps and Flood Plain Ordinance
 - a. Draft Map
 - b. FEMA Model Ordinance
 - c. Palm Beach County Model Ordinance
2. Ordinance 2010-002 – Pain Management Clinics
3. ULDC Article 87 - Native Tree Preservation, Soil Stabilization and Invasive Exotic Removal
4. Discussion of Agricultural Issues (*see excerpt from July 18, 2013 Minutes in this regard – attached to Agenda Packet*)

b. New Business - None

3. CLOSING & ADJOURNMENT

The next meeting of the Unified Land Development Code Review Committee will be held on August 15, 2013 @ 5:30 p.m.

Comments Cards: Anyone from the public wishing to address the ULDCRC must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the ULDCRC with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.



Item 2. MINUTES: Approval of ULDC Review Committee Minutes for: July 18, 2013

Mayor David Browning, Seat 4
Vice Mayor Ronald D. Jarriel, Seat 1
Council Member Tom Goltzené, Seat 5
Council Member Ryan Liang, Seat 3
Council Member Jim Rockett, Seat 2



TOWN OF LOXAHATCHEE GROVES
Unified Land Development Code Review Committee
Thursday, July 18, 2013 at 5:30 p.m.
Central Palm Beach County Chamber of Commerce
13901 Southern Blvd., Loxahatchee, Florida 33470

Committee Chairman Virginia Standish
Committee Vice Chairman Katie Davis
Committee Member Beck Hyslop
Committee Member John Ryan
Committee Member Howard Voren

Town Manager Mark Kutney
Town Clerk Susan Eichhorn
Town Planning Consultant Jim Fleischmann
Town Planning Technician Braeden Garrett

MINUTES

1. OPENING

- a. Call to Order – *Chair Standish*

Chair Standish called the meeting of the Unified land Development Code Review Committee to order at 5:40 p.m.

- b. Roll Call – *Town Clerk Eichhorn*

Upon roll call, Committee members present were Chair Standish, Vice Chair Davis, Member Hyslop, Member Ryan and Member Voren. Also present were Town Manager Mark Kutney, Town Planning Consultant Jim Fleischmann, and Town Clerk Susan Eichhorn.

- c. Approval of Agenda

Motion: Vice Chair Davis made a motion to approve the Agenda. The motion was seconded by Committee Member Hyslop. The motion passed 5/0.

Committee Member Voren Howard suggested a protocol for Committee members wanting to speak at the meeting, using white couplings and a process for speaking. Chair Standish clarified that she had the right to limit a speaker, and suggested that a speaker keep it to no more than 5 minutes on a topic. When three people put their couplings out at the same time she would control who spoke.

- 2. **MINUTES:** Approval of ULDC Review Committee Minutes for: June 20, 2013

Motion: Committee Member Ryan made a motion to approve the minutes of June 20, 2013. The motion was seconded by Vice Chair Davis. The motion passed 5/0.

3. **REGULAR AGENDA**

a. **Old Business**

- 1. Food Insurance Rate Maps and Flood Plain Ordinance
 - a. Draft Map
 - b. FEMA Model Ordinance
 - c. Palm Beach County Model Ordinance

Town Manager Kutney stated that FEMA is waiting to adopt a firm map, which would set the tone for flood insurance matters, etc. He noted that no one is happy with the proposed FEMA Flood Zone map. The bigger cities have been trying to put together a consortium; however, it is incumbent upon each city to do their own review. He stated that he was of the initial opinion that the Town should adopt its own ordinance, or simply adopt the Palm Beach County ordinance; however, Jim Fleischmann had called the County and asked if we could just go under the county ordinance, since the County is administering building permits on behalf of the town. The County indicated that since the County was only administering building permits and the Town was implementing its own planning and zoning functions, the Town should have its own ordinance.

Town Manager Kutney advised that the crucial thing was that the ULDC Committee could advise the Town Council as to whether the Town should have its own floodplain ordinance, adopt the Palm Beach County ordinance, or do something in between.

Town Planning Consultant Fleischmann advised that the Town would have to designate a flood zone administrator and that person would be responsible for doing certain reviews and certain paperwork; obviously, if the County could do that for the Town, that would be very important. If the Town had its own administrator, it would have to go through him/her, and then go to the County for a building permit and go through the County Administrator too.

Town Manager Kutney summarized that the Committee would not have to make a decision tonight, but it would be a good idea for the ULDC Review Committee to provide the Town Council a recommendation in this regard.

Committee Member Ryan requested that the ULDC Review Committee receive a monthly update and Town Manager Kutney agreed that would be provided. He requested that the Committee continue to study the issue, and review the ordinances in the back up material that was provided tonight, which would provide the Committee a basis to make a future recommendation to the Town Council.

2. Ordinance 2010-002 – Pain Management Clinics

Town Manager Kutney reported that the Town had adopted a moratorium in 2010 (March 16th) that declared a zoning in progress moratorium on pain management clinics. He explained that moratoria should have an ending date. Ordinance No. 2010-002 called for Town administration to analyze the potential effects of pain management clinics in the town. Staff had asked the Town Council for direction in the past, and now the ULDC Review Committee would be examining the issue, in order to provide the Town Council a recommendation on what it thinks should happen.

Committee Member Ryan suggested that if Wellington and Royal Palm Beach already had regulations, time and trouble could be saved by looking at their regulations as a model.

Town Manager Kutney advised that staff could collect those and provide the Committee with copies with the next agenda packet.

3. ULDC Article 87 - Native Tree Preservation, Soil Stabilization and Invasive Exotic Removal

Town Manager Kutney suggested that this item is deferred until the next meeting. The ordinance needs to be reviewed and the Town Council needs to be provided with advice from the Committee as to whether it needs more work or more scrutiny.

It was the consensus of the Committee to defer this item to the next meeting.

4. Discussion of Vermiculture and Other Agricultural Issues

Town Planning Consultant Fleischmann explained that this item was being brought up because staff had been requested to do zoning determinations for very unusual uses that were difficult to interpret from the Town Code. All of the uses are related to agricultural issues to some extent. Some of them may have potentially noxious impacts on Town residents. With that in mind, he questioned whether the Town should have some procedures in place to review these projects before they were built, so that the Town would have the chance to mitigate or impose regulations and/or improvements. He further explained that in the AR Zoning District, under permitted uses, there were agriculture and bona fide agriculture – two distinct uses. The property appraiser said that a use becomes bona fide agriculture when it is actually up and running and the person has business receipts and tax returns. That creates a gap between when an intended bona fide agriculture use is started and when it actually becomes bona fide agriculture; that gap would give the Town the ability to take a look at these proposed uses at the point where they are agriculture and before they become bona fide agriculture. That would give the opportunity to address any potential issues that may arise.

Mr. Fleischmann gave as an example a restaurant owner who wanted to bring kitchen waste in, and start a worm farm, with the kitchen waste being fed to the worms; the worm residual would then be used as a soil amendment. He also wanted to bring out his used glass, grind it up and mix it with sand and worm casings to produce a potting soil mixture to grow ornamental plants for his restaurants. Mr. Fleischmann noted that, if not run properly, a worm farm could be very noxious and there were also some potential issues with the grinding of glass, as well as some other environmental issues. He explained that he is using this example for the Committee to consider whether we should be looking at some of these issues prior to their being declared bona fide agriculture.

Mr. Fleischmann clarified that he was asking if some sort of a system should be set up, so that staff could look at all of the impacts beforehand. There was a difference between agriculture and bona fide agriculture, and it was hands off when it was bona fide agriculture. In other words, do we wait until it becomes an issue, or do we allow people to explain what they want to do and allow the Town to identify things that could become an issue.

Committee Member Ryan suggested that the Town could obtain two agreements: a cleanup bond and an agreement to balance the waste they are using and worm production.

Public Comment:

Todd McLendon, 3481 D Road: Commented that nothing about agriculture should be in the ULDC. Town staff could go through the ULDC and find everything about agriculture in the ULDC and see if it should be removed from the ULDC.

Committee Member Voren submitted a document regarding the Town adopted development regulations, with information from the Florida Statutes, and with three questions he suggested should be asked of the Attorney General:

The regulations in the ULDC are enacted as allowed by Florida Statutes Chapter 163. According to Florida Statutes Chapter 163, agriculture is exempt from development codes. Florida Statute §604.50 exempts non-residential farm buildings from all codes and fees.

1. For these exemptions to apply to farms, must the property appraiser classify the lands with a particular use code?
2. To be afforded nuisance protection under the Right to Farm Act Statute §823.14, does the property appraiser need to classify a particular use code and does one need to have to implement BMPs?
3. Can all plants and the entire animal kingdom, inclusive of insects, fish, reptiles, birds, and all animals useful to humans, regardless of whether they are used for food or adornment, be considered farm products or is there a limited list?

Motion: Committee Member Voren made a motion that anything that has to do with agriculture needs to be removed from the ULDC (all references removed). Seconded by Committee Member Hyslop.

Chair Standish requested that the motion is tabled until the next ULDC Review Committee, so that Committee members can take time to review the Florida Statutes. The questions for the AGO can be included in the next ULDC Review Committee meeting agenda, and brought back for discussion at the next meeting.

Town Planning Consultant Fleischmann suggested that what we should do is go through the Code and if there is a particular issue that relates to a Florida Statute, we should reference that Statute and the specific section of that Statute that would apply to any pertinent Code regulation.

Chair Standish requested that the Committee members email any question or comments that they may have on this issue to Town Manager Kutney, and further discussion could take place at the next meeting

Public Comment

Kevin Gareau, 13650 6th Ct. N.: Commented that he agreed that nuisance and sanitation needs to be included in the ULDC

b. New Business - *None*

4. CLOSING & ADJOURNMENT

There being no further business, the Unified Land Development Code Review Committee meeting of July 18, 2013, was adjourned at 8:00 p.m.

Susan Eichhorn, Town Clerk

Virginia Standish, Chair

(SEAL)



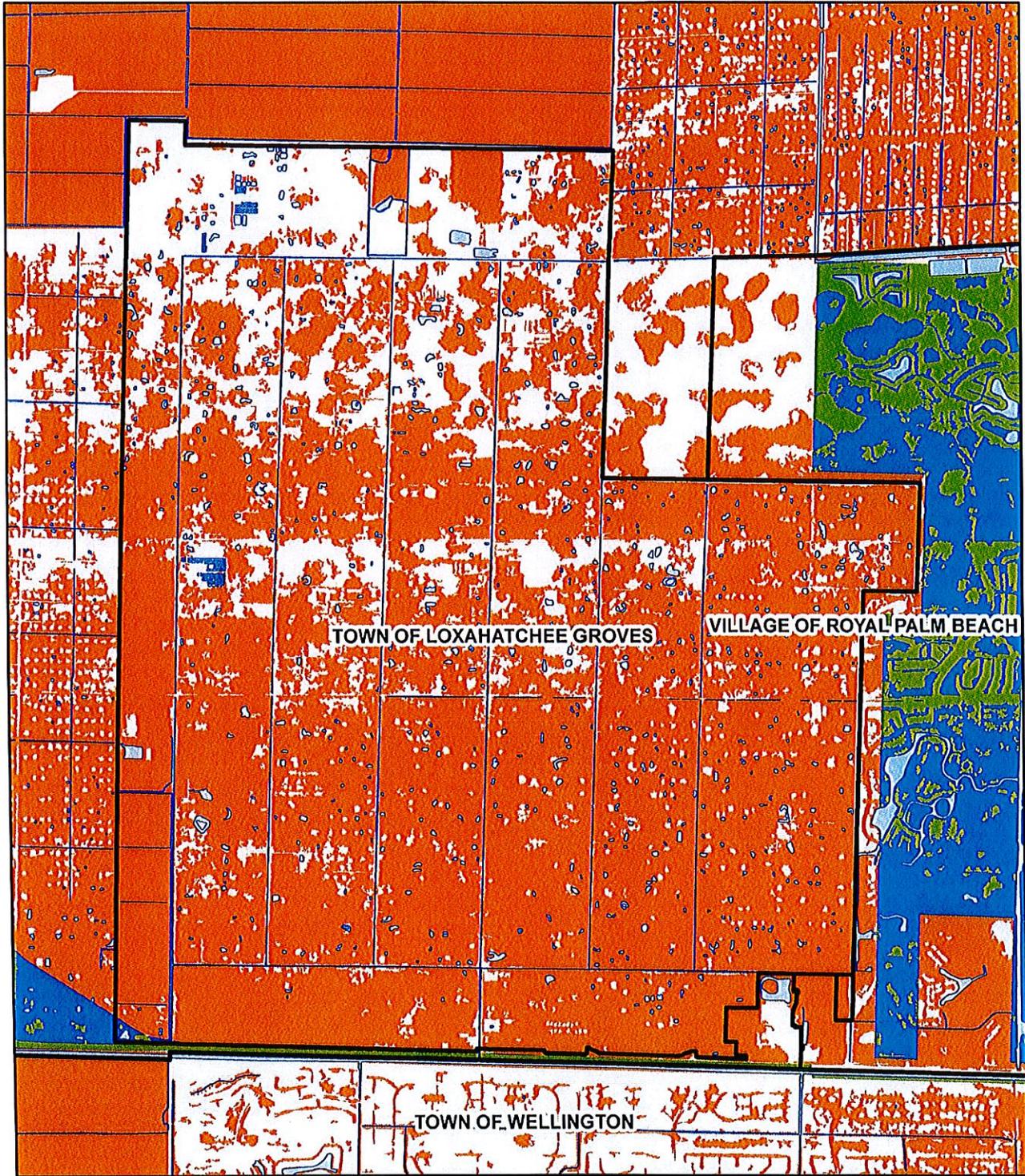
ULDC REVIEW COMMITTEE

OLD BUSINESS



ULDC REVIEW COMMITTEE

Item 1.a. Draft Proposed FEMA Flood Zone Boundary Map



DRAFT PROPOSED FEMA FLOOD ZONE BOUNDARY CHANGES



- | | | |
|---|---|--|
|  CITY BOUNDARY | Flood Zone Change |  Remain in FZ |
|  STREETS |  Added to FZ |  Never in FZ |
|  WATER |  Removed from FZ | |

LOXAHATCHEE GROVES



15,000
Feet



ULDC REVIEW COMMITTEE

Item 1.b. FEMA Model Ordinance

Note: This REVISED version includes inland flood hazard areas ONLY (zones shown on FIRMs that start with the "A", including Zones A, AO, A1-A30, AE, A99, and AH)). It does not include any "higher standards." Contact Technical Assistance for assistance with higher standards.

Please download the Instructions and Notes that go with this REVISED version (April 12, 2012).

Please make any and all changes using <track changes> to facilitate DEM's review. See the Instructions and Notes for contact email and phone for Technical Support.

ORDINANCE NO. XX-XX

AN ORDINANCE BY THE {community's governing body} AMENDING THE {name of community} CODE OF ORDINANCES TO REPEAL {insert appropriate chapter/section numbers}; TO ADOPT A NEW {insert appropriate chapter/section numbers}; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO ADOPT LOCAL ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODE; PROVIDING FOR APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in {Chapter 125 – County Government or Chapter 166 – Municipalities}, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of {name of community} and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the {name of community} was accepted for participation in the National Flood Insurance Program on {date of regular program entry} and the {community's governing body} desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

WHEREAS, section 553.73(5), Florida Statutes, allows adoption of local administrative amendments to the *Florida Building Code* to implement the National Flood Insurance Program; and

WHEREAS, the {community's governing body} has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *Florida Building Code*.

NOW, THEREFORE, BE IT ORDAINED by the {community's governing body} of {name of community} that the following floodplain management regulations, and the following local administrative amendments to the 2010 *Florida Building Code*, are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. This ordinance specifically repeals and replaces the following ordinance(s) and regulation(s): {insert citation to existing flood damage reduction regulations that will be replaced by these regulations and citation(s) to other ordinances that have flood provisions, such as subdivision regulations that also will be replaced by these regulations}.

CHAPTER 1 ADMINISTRATION

SECTION 101 GENERAL

101.1 Title. These regulations shall be known as the *Floodplain Management Ordinance* of {name of community}, hereinafter referred to as "this ordinance."

101.2 Scope. The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

101.3 Intent. The purposes of this ordinance and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

1. Minimize unnecessary disruption of commerce, access and public service during times of flooding;
2. Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
3. Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
4. Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
5. Minimize damage to public and private facilities and utilities;
6. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;

7. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
8. Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

101.4 Coordination with the *Florida Building Code*. This ordinance is intended to be administered and enforced in conjunction with the *Florida Building Code*. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the *Florida Building Code*.

101.5 Warning. The degree of flood protection required by this ordinance and the *Florida Building Code*, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

101.6 Disclaimer of Liability. This ordinance shall not create liability on the part of **{governing body}** of **{name of community}** or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 102 APPLICABILITY

102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

102.2 Areas to which this ordinance applies. This ordinance shall apply to all flood hazard areas within the **{name of community}**, as established in Section 102.3 of this ordinance.

102.3 Basis for establishing flood hazard areas. The Flood Insurance Study for **{insert title of FIS }** dated **{insert date of FIS}**, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the **{Office/agency and address}**.

102.3.1 Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to Section 105 of this ordinance the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

1. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area

and subject to the requirements of this ordinance and, as applicable, the requirements of the *Florida Building Code*.

2. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

102.4 Other laws. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

102.5 Abrogation and greater restrictions. This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the *Florida Building Code*. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.

102.6 Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

SECTION 103 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

103.1 Designation. The {insert position title} is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

103.2 General. The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 107 of this ordinance.

103.3 Applications and permits. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

1. Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
2. Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
3. Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
4. Provide available flood elevation and flood hazard information;

5. Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
6. Review applications to determine whether proposed development will be reasonably safe from flooding;
7. Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and
8. Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.

103.4 Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and this ordinance is required.

103.5 Modifications of the strict application of the requirements of the *Florida Building Code*. The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 107 of this ordinance.

103.6 Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.

103.7 Inspections. The Floodplain Administrator shall make the required inspections as specified in Section 106 of this ordinance for development that is not subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*.

Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

103.8 Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:

1. Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 103.4 of this ordinance;
2. Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
3. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;
4. Review required design certifications and documentation of elevations specified by this ordinance and the *Florida Building Code* and this ordinance to determine that such certifications and documentations are complete; and
5. Notify the Federal Emergency Management Agency when the corporate boundaries of **{name of community}** are modified.

103.9 Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the *Florida Building Code*. These records shall be available for public inspection at **{location and instructions to request access, if applicable}**.

SECTION 104 PERMITS

104.1 Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.

104.2 Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

104.2.1 Buildings, structures and facilities exempt from the *Florida Building Code*.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the *Florida Building Code* and any further exemptions provided by law, which are subject to the requirements of this ordinance:

1. Railroads and ancillary facilities associated with the railroad.
2. Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
3. Temporary buildings or sheds used exclusively for construction purposes.
4. Mobile or modular structures used as temporary offices.
5. Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
6. Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
7. Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
8. Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
9. Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps

104.3 Application for a permit or approval. To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:

1. Identify and describe the development to be covered by the permit or approval.
2. Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
3. Indicate the use and occupancy for which the proposed development is intended.
4. Be accompanied by a site plan or construction documents as specified in Section 105 of this ordinance.
5. State the valuation of the proposed work.
6. Be signed by the applicant or the applicant's authorized agent.

7. Give such other data and information as required by the Floodplain Administrator.

104.4 Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

104.5 Expiration. A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

104.6 Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.

104.7 Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

1. The {insert name} Water Management District; section 373.036, F.S.
2. Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
3. Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
4. Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

SECTION 105 SITE PLANS AND CONSTRUCTION DOCUMENTS

105.1 Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

1. Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
2. Where flood hazard areas, base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 105.2 of this ordinance.
3. Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in

accordance with Section 105.2(1) or (2) of this ordinance.

4. Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
5. Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
6. Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
7. Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

105.2 Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:

1. Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source; or
2. Where base flood elevation and floodway data are not available from another source, where the available the data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - a. Require the applicant to develop base flood elevation data prepared in accordance with currently accepted engineering practices; or
 - b. Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
3. Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

105.3 Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

1. For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant

proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105.4 of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

2. For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, a floodway encroachment analysis which demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
3. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in Section 105.4 of this ordinance.

105.4 Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 106 INSPECTIONS

106.1 General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

106.1.1 Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

106.1.2 Buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

106.1.2.1 Buildings, structures and facilities exempt from the *Florida Building Code*, lowest floor inspection. Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the *Florida Building Code*, or the owner's authorized agent, shall submit to the Floodplain Administrator:

1. If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
2. If the elevation used to determine the required elevation of the lowest floor was

determined in accordance with Section 105.2(3) of this ordinance, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

106.1.2.2 Buildings, structures and facilities exempt from the *Florida Building Code*, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in Section 106.1.2.1 of this ordinance.

106.1.3 Manufactured homes. The {Floodplain Administrator or Building Official} shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the {Floodplain Administrator or Building Official}.

SECTION 107 VARIANCES AND APPEALS

107.1 General. The {body designated to hear variances} shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), F.S., the {body designated to hear variances} shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*.

107.2 Appeals. The {body designated to hear appeals} shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of {body designated to hear variances} may appeal such decision to the Circuit Court, as provided by Florida Statutes.

107.3 Limitations on authority to grant variances. The {body designated to hear variances} shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 107.6 of this ordinance, the conditions of issuance set forth in Section 107.7 of this ordinance, and the comments and recommendations of the Floodplain Administrator and the Building Official. The {body designated to hear variances} has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

107.3.1 Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in Section 105.3 of this ordinance.

107.4 Historic buildings. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be

subject to the requirements of the *Florida Building Code*.

107.5 Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance meets the requirements of Section 107.3.1, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

107.6 Considerations for issuance of variances. In reviewing requests for variances, the **{body designated to hear variances}** shall consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, this ordinance, and the following:

1. The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
4. The importance of the services provided by the proposed development to the community;
5. The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
6. The compatibility of the proposed development with existing and anticipated development;
7. The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
8. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
9. The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
10. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

107.7 Conditions for issuance of variances. Variances shall be issued only upon:

1. Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
2. Determination by the **{body designated to hear variances}** that:
 - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances,

cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and

- c. The variance is the minimum necessary, considering the flood hazard, to afford relief;
3. Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
4. If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

SECTION 108 VIOLATIONS

108.1 Violations. Any development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the *Florida Building Code* is presumed to be a violation until such time as that documentation is provided.

108.2 Authority. For development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

108.3 Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law **{or insert specific reference to state or local law}**.

CHAPTER 2 DEFINITIONS

SECTION 201 GENERAL

201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

201.2 Terms defined in the *Florida Building Code*. Where terms are not defined in this ordinance and are defined in the *Florida Building Code*, such terms shall have the meanings ascribed to them in that code.

201.3 Terms not defined. Where terms are not defined in this ordinance or the *Florida Building Code*, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 202 DEFINITIONS

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

ASCE 24. A standard titled *Flood Resistant Design and Construction* that is referenced by the *Florida Building Code*. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 1612.2.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 1612.2.]

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

1. Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
2. Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in FBC, B, Section 1612.2.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before **{date the community's first floodplain management ordinance was adopted}**. [Also defined in FBC, B, Section 1612.2.]

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before **{date the community's first floodplain management ordinance was adopted}**.

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

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 1612.2.]

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

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

1. The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
2. The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 1612.2.]

Floodplain Administrator. The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of

specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.

Floodway. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. [Also defined in FBC, B, Section 1612.2.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code, Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building Code, Fuel Gas*.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a

Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
3. Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the *Florida Building Code* or ASCE 24. [Also defined in FBC, B, Section 1612.2.]

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, structures for which the "start of construction" commenced on or after **{date the community's first floodplain management ordinance was adopted}** and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after **{date the community's first floodplain management ordinance was adopted}**.

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in 15C-1.0101, F.A.C.]

Recreational vehicle. A vehicle, including a park trailer, which is: [Defined in section 320.01(b),

F.S.)

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 1612.2.]

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 1612.2.]

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by this ordinance or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or

over which water flows at least periodically.

CHAPTER 3 FLOOD RESISTANT DEVELOPMENT

SECTION 301 BUILDINGS AND STRUCTURES

301.1 Design and construction of buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to Section 104.2.1 of this ordinance, buildings, structures, and facilities that are exempt from the *Florida Building Code*, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the *Florida Building Code* that are not walled and roofed buildings shall comply with the requirements of Section 307 of this ordinance.

SECTION 302 SUBDIVISIONS

302.1 Minimum requirements. Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

1. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
2. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

302.2 Subdivision plats. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

1. Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats and final plats;
2. Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105.2(1) or (2) of this ordinance; and
3. Compliance with the site improvement and utilities requirements of Section 303 of this ordinance.

SECTION 303 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

303.1 Minimum requirements. All proposed new development shall be reviewed to determine that:

1. Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
2. All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
3. Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and

AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

303.2 Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

303.3 Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

303.4 Limitations on sites in regulatory floodways. No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section 105.3(1) of this ordinance demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

303.5 Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

SECTION 304 MANUFACTURED HOMES

304.1 General. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.

304.2 Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the *Florida Building Code Residential* Section R322.2 and this ordinance.

304.3 Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

304.4 Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with Section 304.4.1 or 304.4.2 of this ordinance, as applicable.

304.4.1 General elevation requirement. Unless subject to the requirements of Section 304.4.2 of this ordinance, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home

park or subdivision; or (d) In an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential Section R322.2 (Zone A)*.

304.4.2 Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 304.4.1 of this ordinance, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

1. Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code, Residential Section R322.2 (Zone A)*; or
2. Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

304.5 Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code, Residential Section R322* for such enclosed areas.

304.6 Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code, Residential Section R322*.

SECTION 305 RECREATIONAL VEHICLES AND PARK TRAILERS

305.1 Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

1. Be on the site for fewer than 180 consecutive days; or
2. Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

305.2 Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in Section 305.1 of this ordinance for temporary placement shall meet the requirements of Section 304 of this ordinance for manufactured homes.

SECTION 306 TANKS

306.1 Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

306.2 Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 306.3 of this ordinance shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and

the effects of flood-borne debris.

306.3 Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

306.4 Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

1. At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION 307 OTHER DEVELOPMENT

307.1 General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the *Florida Building Code*, shall:

1. Be located and constructed to minimize flood damage;
2. Meet the limitations of Section 303.4 of this ordinance if located in a regulated floodway;
3. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
4. Be constructed of flood damage-resistant materials; and
5. Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

307.2 Fences in regulated floodways. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 303.4 of this ordinance.

307.3 Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 303.4 of this ordinance.

307.4 Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 303.4 of this ordinance. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of Section 105.3.3(3) of this ordinance.

SECTION 3. The {current insert citation, if any}, is hereby amended by the following administrative amendments to the *Florida Building Code, Building*.

Sec. 104.10.1, Florida Building Code, Building

Add a new Sec. 104.10.1 as follows: *[See instructions before including this provision]*

104.10.1 Modifications of the strict application of the requirements of the Florida Building Code. The Building Official shall coordinate with the Floodplain Administrator to review requests submitted to the Building Official that seek approval to modify the strict application of the flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 117.

Sec. 107.6.1, Florida Building Code, Building

Add a new Sec. 107.6.1 as follows:

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the *Florida Building Code*.

Sec. 117, Florida Building Code, Building

Add a new Sec. 117 as follows:

117 VARIANCES IN FLOOD HAZARD AREAS

117.1 Flood hazard areas. Pursuant to section 553.73(5), F.S., the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the *Florida Building Code, Building* or, as applicable, the provisions of R322 of the *Florida Building Code, Residential*. This section shall not apply to Section 3109 of the *Florida Building Code, Building*.

SECTION 4. FISCAL IMPACT STATEMENT.

In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

SECTION 5. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in **{insert name of community or all unincorporated areas of the county}**. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after **{insert date}**.

SECTION 6. REPEALER.

Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces the following ordinance(s) and regulation(s): **{insert citation to existing flood damage reduction regulations that will be replaced by these regulations and citation(s) to other ordinances that have flood provisions, such as subdivision regulations that also will be replaced by these regulations}**.

SECTION 7. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the **{community's governing body}** that the provisions of this ordinance shall become and be made a part of the **{name of community's}** Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 8. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 9. EFFECTIVE DATE.

This ordinance shall take effect on **{insert date}**.

PASSED on first reading **{insert date}**.

PASSED and ADOPTED in regular session, with a quorum present and voting, by the **{governing body}**, upon second and final reading this **{insert date}**.

{Governing body}

{Chief Elected Officer}

ATTEST:

{Manager/Clerk}

APPROVED AS TO FORM:

{Attorney}



ULDC REVIEW COMMITTEE

Item 1.c. Palm Beach County Model Ordinance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TITLED PALM BEACH COUNTY FLOOD DAMAGE PREVENTION ORDINANCE; REPEALING ORDINANCE 88-3; PROVIDING FINDINGS OF FACT; PROVIDING FOR A STATEMENT OF OBJECTIVES; PROVIDING FOR METHODS OF REDUCING FLOOD LOSSES; PROVIDING FOR DEFINITIONS; PROVIDING FOR GENERAL PROVISIONS; PROVIDING FOR ADMINISTRATION; PROVIDING FOR PROVISIONS FOR FLOOD DAMAGE PREVENTION; PROVIDING FOR GRADING AND EARTH FILL RESTRICTIONS; PROVIDING FOR APPEAL AND VARIANCE PROCEDURES; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE ULDC; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, authorizes the legislative and governing body of Palm Beach County the power to establish and administer programs of flood control; and

WHEREAS, the present Flood Damage Prevention Ordinance, 88-3, as codified, has been in effect since February 23, 1988; and

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida has the responsibility to adopt regulations designed to promote the public health, safety and general welfare of its citizens; and

WHEREAS, Palm Beach County has determined that the present Flood Damage Prevention Ordinance is insufficient in providing the maximum public health, safety and general welfare of its citizens; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. TITLE:

This Ordinance shall be titled the "Palm Beach County Flood Damage Prevention Ordinance".

SECTION 2. REPEAL OF ORDINANCE 88-3:

Article VI, Chapter 7 of the Palm Beach County Code, codifying Ordinance No. 88-3 (The Palm Beach County Flood Damage Prevention Ordinance) is hereby repealed.

SECTION 3. FINDING OF FACT:

The flood hazard areas of Palm Beach County are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary

1 public health, safety and general welfare. Flood losses are caused by
2 the cumulative effect of obstructions in Special Flood Hazard Areas
3 (SFHAs) causing increases in flood heights and velocities, and by the
4 occupancy in flood prone areas of uses vulnerable to floods or
5 hazardous to other lands inadequately elevated, flood-proofed, or
6 otherwise unprotected from flood damages.

7 **SECTION 4: STATEMENT OF OBJECTIVES:**

8 The objectives of this Ordinance are to protect human life, health
9 and safety; minimize expenditure of public money for costly flood control
10 projects; minimize the need for rescue and relief efforts associated with
11 flooding generally undertaken at the expense of the general public;
12 minimize prolonged business interruptions; minimize damage to public
13 facilities and utilities such as water and gas mains, electric, telephone,
14 sewer lines, roadways, bridges and culverts located in flood prone areas;
15 and to help maintain a stable tax base by providing for the sound use
16 and development of flood prone areas in such a manner as to minimize
17 adverse impact of new buildings and to minimize future flood blight
18 areas; and to ensure that those obtaining building permits and potential
19 buyers are notified of property that is in an SFHA.

20 **SECTION 5: METHODS OF REDUCING FLOOD LOSSES:**

- 21 (A) In order to accomplish its objectives, this Ordinance includes
22 methods and provisions for:
- 23 (B) restricting or prohibiting uses which are dangerous to health,
24 safety, and property due to water or erosion hazards, or which
25 result in adverse impacts from erosion, flood heights or
26 floodwater velocities;
- 27 (C) requiring that uses vulnerable to floods, including facilities
28 which serve such uses, be protected against flood damage
29 throughout their intended life span;
- 30 (D) controlling the alteration of natural floodplains, stream
31 channels, and natural protective barriers, which help
32 accommodate or channel flood waters;
- 33 (E) controlling filling, grading, dredging, minimum floor elevations
34 and other construction detail which may affect flood damage to
35 buildings; and

1 (F) preventing or regulating the construction of flood barriers that
2 will unnaturally divert floodwaters, which may increase flood
3 hazards in other areas.

1 **SECTION 6. DEFINITIONS:**

2 Unless specifically defined below, words or phrases used in this
3 Ordinance shall be interpreted so as to give them the meanings they
4 have in common usage and to give this Ordinance its most reasonable
5 application.

6 **(1) Accessory Building or Appurtenant Structure:** means a structure
7 that is located on the same parcel of property as a principal structure and
8 the use of which is incidental to the use of the principal structure. For
9 purposes of this Ordinance, accessory structures should constitute a
10 minimal investment not to exceed 25% of the value of the primary
11 structure, shall not be used for human habitation, and be designed to
12 have minimal flood damage potential. Examples of accessory buildings
13 or appurtenant structures for flood damage purposes are detached
14 garages, carports, storage sheds and barns. All structures used for
15 human occupancy shall be deemed principal structures and shall comply
16 with these regulations, and not be defined as an Accessory Building or
17 Appurtenant Structure.

18 **(2) Addition:** (to an existing building) means any walled and roofed
19 expansion to the perimeter of a building in which the addition is
20 connected by a common load-bearing wall other than a firewall. Any
21 walled and roofed expansion, which is connected by a firewall or is
22 separated by independent perimeter load-bearing walls, is new
23 construction, not an addition.

24 **(3) Adverse Impact:** the increased probability of damage to structures
25 from flooding or from floodwater erosion.

26 **(4) Appeal:** a request for a review of the Flood Damage Prevention
27 Administrator's interpretation of any provision of, or a request for a
28 variance, from this Ordinance.

29 **(5) Area of Shallow Flooding:** a designated AO or AH Zone on the
30 latest edition of FEMA issued FIRM for the county with base flood depths
31 from one to three feet where a clearly defined channel does not exist,
32 where the path of flooding is unpredictable and indeterminate, and where
33 velocity flow may be evident. Such flooding is characterized by ponding
34 or sheet flow.

- 1 (6) **Area of Special Flood Hazard:** (see Special Flood Hazard Area
2 (SFHA)) the land in the floodplain which is subject to a one percent (1%)
3 or greater chance of flooding in any given year (100-Year floodplain as
4 defined by FEMA), and land developed into building sites without a
5 master storm water drainage system.
- 6 (7) **Base Flood:** the flood event having a one percent (1%) chance of
7 being equaled or exceeded in any given year (also called the "100-Year
8 Flood" and the "Regulatory Flood").
- 9 (8) **Base Flood Elevation or BFE:** the highest water surface elevation
10 associated with the base flood, set by FEMA in SFHAs.
- 11 (9) **Breakaway Wall:** a wall that is not part of the structural support of
12 the building and is intended through its design and construction to
13 collapse under specific lateral loading forces without causing damage to
14 the elevated portion of the building or the supporting foundation system.
- 15 (10) **Building:** a structure that encloses an area for any use and shall
16 not include structures such as walls, playground equipment or gas tanks.
- 17 (11) **Coastal High Hazard Area:** a SFHA extending from offshore to the
18 inland limit of a primary frontal dune along an open coast and any other
19 areas including, but not limited to, hurricane surges or subject to high
20 velocity wave action from storms or seismic sources. The area is
21 designated on the FIRM as Zone V1-V30, VE, or V.
- 22 (12) **Critical Facility:** a facility for which any flooding would adversely
23 affect essential public services. Critical facilities include, but are not
24 limited to, nursing homes, hospitals, police, fire and emergency response
25 installations, or installations which produce, use or store hazardous
26 materials or hazardous waste.
- 27 (13) **DCA:** State of Florida Department of Community Affairs
- 28 (14) **Development:** any man-made change of a building or other
29 structure, or the carrying out of any activity to improved or unimproved
30 real estate so as to change the use or appearance of the land, including,
31 but not limited to mining, dredging, filling, grading, paving, excavating,
32 drilling operations, or permanent storage of materials or equipment.
- 33 (15) **Elevated Building:** a non-basement building built to have the
34 lowest floor elevated above the ground level by means of fill, solid
35 foundation perimeter walls, pilings, columns, posts, piers or shear walls.

- 1 (16) **Encroachment:** the advance or infringement of uses, plant growth,
2 fill, excavation, buildings, permanent structures or development into a
3 SFHA, which may impede or alter the flow capacity of floodwaters.
- 4 (17) **Exceptional Hardship:** (as applied to variance criteria) A condition
5 of a parcel of property which is unusual or exhibits peculiar physical
6 characteristics. These characteristic(s) must be unique only to that
7 property and not to be shared by adjacent parcels. These unique
8 characteristics must pertain to the land itself, not to the structure, its
9 inhabitants, or the property owners. Mere economic or financial hardship
10 alone is not "exceptional". Inconvenience, aesthetic considerations,
11 physical handicaps, personal preferences, or the disapproval of one's
12 neighbors cannot, as a rule, qualify as exceptional hardships. A
13 hardship shall **NOT** necessarily exist even if the alternative is more
14 expensive, or requires the property owner to build elsewhere or put the
15 parcel to a different use than originally intended.
- 16 (18) **Existing:** (as applied to building, development or structure) any
17 man-made improvement on which the start of construction commenced
18 before the enactment of the first Flood Damage Prevention Regulations
19 adopted by the County, Ordinance 79-1, on January 31, 1979.
- 20 (19) **Existing Manufactured Home Park or Subdivision:** a
21 manufactured home park or subdivision for which the construction of
22 facilities for servicing the lots on which the manufactured homes are to
23 be affixed, including, at a minimum, the installation of utilities, the
24 construction of streets, and either final site grading or the pouring of
25 concrete pads was completed before the effective date of the first Flood
26 Damage Prevention Regulations adopted by the County, Ordinance 79-
27 1, on January 31, 1979.
- 28 (20) **Expansions to an Existing Manufactured Home Park or**
29 **Subdivision:** the preparation of additional sites by the construction of
30 facilities for servicing the lots on which the manufactured homes are to
31 be affixed, including at a minimum, the installation of utilities, the
32 construction of streets and either final site grading or the pouring of
33 concrete pads.
- 34 (21) **FEMA:** Federal Emergency Management Agency.

- 1 (22) **Flood or Flooding:** a general and temporary condition of partial or
2 complete inundation of normally dry land areas from the overflow of
3 inland or tidal waters; or, the unusual and rapid accumulation or runoff of
4 surface waters from any source.
- 5 (23) **Flood Boundary and Floodway Map or FBFM:** the latest edition of
6 the official map on which the FEMA or Federal Insurance Administration
7 (FIA) has delineated SFHAs and regulatory floodway.
- 8 (24) **Flood Damage Prevention:** the operation of an overall program of
9 corrective and preventive measures for reducing flood damage and
10 preserving and enhancing, where possible, natural resources in the flood
11 prone areas including, but not limited to, emergency preparedness plans,
12 flood control works, flood damage prevention regulations, open space
13 plans, and setting of minimum floor elevations.
- 14 (25) **Flood Damage Prevention Administrator:** the county building
15 official hereby appointed to administer and enforce these flood damage
16 prevention regulations, including, but not limited to, all variance and
17 appeal hearings before the Flood Damage Prevention Board or a
18 designee of the Building Official's holding a FEMA Certified Floodplain
19 Manager Designation.
- 20 (26) **Flood Damage Prevention Board:** a group of citizens appointed to
21 the Construction Board of Adjustments and Appeals, who shall hear and
22 decide variance requests and appeals made under this Ordinance.
- 23 (27) **Flood Damage Prevention Ordinance:** this regulation and FEMA
24 documents referenced in Section 7B herein. In addition, there may be
25 other controls on development in flood prone areas contained in Zoning
26 Ordinances, subdivision regulations, building codes and other state and
27 federal regulations.
- 28 (28) **Flood Hazard Boundary Map or FHBM:** the latest edition of an
29 official map of the county, issued by FEMA that indicate approximate
30 areas of 100-year flood hazards in a community.
- 31 (29) **Flood Insurance Rate Map or FIRM:** the latest edition of an official
32 map of the county, on which FEMA has delineated both the FEMA
33 SFHAs and the risk premium zones applicable to the county.
- 34 (30) **Flood Insurance Study or FIS:** the official hydraulic and hydrologic
35 report provided by FEMA. The report contains flood profiles, as well as

1 the FIRM, FHBM (where applicable) and the water surface elevation of
2 the base flood.

3 **(31) Floodplain:** any land area susceptible to flooding, as defined in
4 FIRM and any area without a master storm water drainage system.

5 **(32) Floodway:** the channel of a river or other watercourse,
6 intercoastals, and the adjacent land areas that must be reserved in order
7 to discharge the base flood without cumulatively increasing the water
8 surface elevation more than twelve inches (12").

9 **(33) Hardship:** see Exceptional Hardship.

10 **(34) Highest Adjacent Natural Grade or HANG:** the highest natural
11 elevation of the ground surface, prior to the start of any past or proposed
12 construction, immediately next to the proposed exterior walls of a
13 building.

14 **(35) Historic Structure:** any structure that is listed individually in the
15 National Register of Historic Places (a listing maintained by the
16 Department of the Interior) or preliminarily determined by the Secretary
17 of the Interior as meeting the requirements for individual listing on the
18 National Register or certified or preliminarily determined by the Secretary
19 of the Interior as contributing to the historical significance of a registered
20 historic or a district preliminarily determined by the Secretary to qualify
21 as a registered historic district or individually listed on a state inventory of
22 historic places in states with historic preservation programs which have
23 been approved by the Secretary of the Interior; or individually listed on
24 the Historic Palm Beach County Preservation Board's inventory of
25 historic places.

26 **(36) HUD:** U.S. Department of Housing and Urban Development

27 **(37) Lowest Adjacent Roadway Crown or LARC:** the lowest elevation
28 of any point in the crown of a street or road immediately next to the site
29 of a new structure.

30 **(38) Lowest Floor:** the lowest floor of the lowest enclosed area
31 (including basement) of a building. Any unfinished or flood resistant
32 enclosure, used solely for parking of vehicles, building access, or
33 storage, in an area other than a basement, is not considered a building's
34 lowest floor, provided that such enclosure is not built so as to render the

1 structure in violation of the non-elevation design standards of this
2 Ordinance.

3 **(39) Manufactured Home:** a single-family dwelling constructed entirely
4 in a controlled factory environment built to HUD standards; defined in 24
5 CFR 3280.2 Subpart A Definitions as amended or replaced, as a
6 structure transportable in one or more sections, which in the traveling
7 mode, is eight body feet or more in width or forty body feet or more in
8 length, or when erected on site, is three hundred and twenty or more
9 square feet, and which is built on a permanent chassis and designed to
10 be a dwelling with or without a permanent foundation when connected to
11 the required utilities which includes the plumbing, heating, air
12 conditioning and electrical systems contained therein. For the purpose
13 of this Ordinance, "mobile home" is considered to be synonymous with
14 manufactured home. The term includes, but is not limited to, park
15 trailers, travel trailers and commercial trailers placed on site for 180
16 consecutive days or longer and intended to be improved property.
17 Those manufactured buildings for residential, commercial, institutional or
18 other use, constructed under DCA programs for compliance with Florida
19 Building Code are excluded from this definition.

20 **(40) Manufactured Home Park or Subdivision:** a parcel or contiguous
21 parcel, of land divided into two or more manufactured home lots for rent
22 or sale.

23 **(41) Market Value:** the building value, excluding the land, as established
24 by what the local real estate market will bear. Market value can be
25 established by independent certified appraisal, replacement cost
26 depreciated by age of building (Actual Cash Value), or adjusted
27 assessed values.

28 **(42) Master Storm Water Drainage System:** an engineered system,
29 which may include culverts, retention areas, water control gates, control
30 devices, earth grading and/or minimum floor elevations in development
31 of building sites, designed to insure less than one percent (1%) annual
32 chance of flooding of the building sites.

33 **(43) Mean Sea Level:** the average height of the sea for all stages of the
34 tide. It is used as a reference for establishing various elevations within

1 the floodplain. For purposes of this Ordinance, the term is synonymous
2 with 1929 National Geodetic Vertical Datum (NGVD).

3 **(44) National Geodetic Vertical Datum or NGVD:** as corrected in the
4 year of 1929, is a vertical control used as a reference for establishing
5 varying elevations within the floodplain. This datum is referenced on
6 existing FIRM of FEMA.

7 **(45) New Building:** a structure that encloses an area for any use, and
8 shall not include structures such as walls, playground equipment or gas
9 tanks, for which the "start of construction" commenced on or after the
10 effective date of this Ordinance. The term also includes any subsequent
11 improvements to such buildings.

12 **(46) New Construction:** any structure, including duct work and Heating,
13 Ventilating, and Air Conditioning (HVAC) equipment, for which the "start
14 of construction" commenced on or after the effective date of this
15 Ordinance. The term also includes any subsequent improvements to
16 such structures.

17 **(47) New Manufactured Home Park or Subdivision:** a manufactured
18 home park or subdivision for which the construction of facilities for
19 servicing the lots on which the manufactured homes are to be affixed,
20 including at a minimum, the installation of utilities, the construction of
21 streets, and either final site grading or the pouring of concrete pads, is
22 completed on or after the effective date of this Ordinance.

23 **(48) Non-Residential Construction:** New construction or substantial
24 improvement of structures not defined as "Residential Construction" and
25 including but not limited to small business concerns and commercial
26 hotels/motels as defined by FEMA, churches, schools, nursing homes,
27 farm buildings, government buildings, mercantile structures, industrial
28 plants and warehouses.

29 **(49) North American Vertical Datum or NAVD:** A proposed
30 replacement datum of NGVD, identified by FEMA to be the reference of
31 new FIRM from FEMA when current 1979 and 1982 flood maps are
32 replaced.

33 **(50) Obstruction:** includes, but is not limited to, any dam, wall, wharf,
34 embankment, levee, dike, pile, abutment, protection, excavation,
35 channelization, bridge, conduit, culvert, building, wire, fence, rock.

1 gravel, refuse, fill, structure, vegetation or other material in, along, across
2 or projecting into any watercourse which may alter, impede, retard or
3 change the direction and/or velocity of the flow of water, or due to its
4 location, its propensity to snare or collect debris carried by the flow of
5 water, or is likely to be carried downstream.

6 **(51) Public Health, Safety and General Welfare:** conditions
7 concerning the safety or health of an entire community or neighborhood,
8 or any considerable number of people.

9 **(52) Recreational Vehicle:** a vehicle-type unit primarily designed as
10 temporary living quarters for recreational, camping, or travel use, which
11 either has its own motive power or is mounted on or drawn by another
12 vehicle (see F.S. 320.01, as amended or replaced). Such vehicles shall
13 comply with the length and width provisions of F.S. 316.515, as
14 amended or replaced.

15 **(53) Regulatory Floodway:** the channel of a river or other watercourse
16 and the adjacent land areas that must be reserved in order to discharge
17 the base flood without cumulatively increasing the water surface
18 elevation more than twelve inches (12").

19 **(54) Repetitive Loss:** flood-related damages sustained by a property,
20 which the National Flood Insurance Program has paid two or more flood
21 claims of \$1,000.00 or more in any given 10-year period since 1978.

22 **(55) Residential Construction:** new construction or substantial
23 improvement of structures including but not limited to high-rise and low-
24 rise condominium units, apartment buildings, timeshares,
25 townhouse/rowhouse structures, residential hotels/motels and "other
26 residential structures" as defined by FEMA, manufactured and
27 mobile/trailer homes, single family structures and duplexes.

28 **(56) Special Flood Hazard Area or SFHA:** (see Area of Special Flood
29 Hazard) is a geographic area identified by FEMA and the county as
30 being low lying areas or especially susceptible to flooding and shown on
31 the latest edition of maps (FHBM or FIRM) as Zone A, AO, A1-A30, AE,
32 A99, AH, V1-V30, VE, or V; and any area developed as building sites,
33 without a master storm water drainage system, in unincorporated Palm
34 Beach County outside FEMA A or V zones.

1 **(57) Start of Construction:** (for other than new construction or
2 substantial improvement under the Coastal Barrier Resources Act P.L.
3 97-348, as amended or replaced), for all construction, includes
4 substantial improvement, and means the date the building permit was
5 issued, provided the actual start of construction, repair, reconstruction, or
6 improvement was within 180 days of the permit date. The actual start
7 means the first placement of permanent construction of a building,
8 including a manufactured home, on a site, such as the pouring of slabs
9 or footings, installation of piles, construction of columns, or any work
10 beyond the stage of excavation or placement of a manufactured home
11 on a foundation. Permanent construction does not include land
12 preparation, such as clearing, grading and filling; nor does it include
13 installation of streets and/or walkways; nor does it include excavation for
14 a basement, footings, piers or foundations or the erection of temporary
15 forms; nor does it include installation on the property of accessory
16 buildings, such as garages or sheds not occupied as dwelling units or not
17 part of the main building. For substantial improvement, the actual start of
18 construction means the first installation of any foundation, wall, ceiling,
19 floor, or other structural part of a building, whether or not that alteration
20 affects the external dimensions of the building, on all residential,
21 commercial, institutional, and other buildings.

22 **(58) Structure:** that constructed by man, including gas or liquid storage
23 tanks that are principally above ground, walls and roofed buildings.

24 **(59) Substantial Damage:** damage of any origin sustained by a
25 structure whereby the cost of restoring the structure to its before
26 damaged condition would equal or exceed 50 percent (50%) of the
27 market value of the structure before the damage occurred. This term
28 also includes structures that have incurred "repetitive loss".

29 **(60) Substantial Improvement:** any combination of repairs,
30 reconstruction, rehabilitation, addition, alteration, or other improvements
31 to a building taking place during a five (5) year period, in which the
32 cumulative cost of such improvements equals or exceeds 50 percent
33 (50%) of the market value of the building before the "start of
34 construction" of the repair or improvement. This term does not include
35 any repair or improvement of a structure to correct existing violations of

1 state or local health, sanitary, or safety code specifications, which have
2 been identified by the local code enforcement official prior to the
3 application for the permit for improvement, and which are the minimum
4 necessary to assure safe living conditions. For the purposes of this
5 definition, "substantial improvement" occurs when the first installation of
6 any foundation, wall, ceiling, floor, or other structural part of the building
7 commences, whether or not that installation affects the external
8 dimensions of the structure. This term includes structures that have
9 incurred "repetitive loss" or "substantial damage," regardless of the
10 actual repair work performed.

11 **(61) Substantially Improved Existing Manufactured Home Parks or**
12 **Subdivisions:** the repair, reconstruction, rehabilitation or improvement
13 of the streets, utilities and pads equals or exceeds 50 percent (50%) of
14 the value of the streets, utilities and pads before the repair,
15 reconstruction or improvement commenced.

16 **(62) Variance:** after a public hearing before the Flood Damage
17 Prevention Board, a grant of relief from the requirements of this
18 Ordinance, which permits construction in a manner otherwise prohibited
19 by this Ordinance where specific enforcement would result in exceptional
20 hardship.

21 **(63) Violation:** the failure of a structure or other development to be fully
22 compliant with this Ordinance. In addition, a structure or other
23 development without a required FEMA elevation certificate, other
24 acceptable elevation certifications, or other evidence of compliance
25 required in this Ordinance is presumed to be in violation until such time
26 as that documentation is provided.

27 **(64) Watercourse:** a lake, river, creek, stream, wash, channel or other
28 topographic feature on or over which waters flow at least periodically.
29 Watercourse includes specifically designated areas in which substantial
30 flood damage may occur.

31 **(65) Water Surface Elevation:** the height, in relation to NGVD of 1929,
32 (or other datum, where specified) of floods of various magnitudes and
33 frequencies in the floodplains of coastal or riverine areas.

34 **SECTION 7. GENERAL PROVISIONS:**

35 **A. Applicability:**

- 1 This Ordinance shall apply within the unincorporated areas of
- 2 Palm Beach County.

1 **B. Basis for Establishing Special Flood Hazard Areas**

2 **(SFHAs):**

3 SFHAs identified by FEMA in the FIS "Wave Height Analysis" for
4 Palm Beach County, Florida Unincorporated Areas" dated April 15, 1982,
5 together with FIRM maps of Community Panels 1201920140A,
6 1201920150A, 1201920160A, 1201920170A, 1201920180A,
7 1201920185A, 1201920200A and 1201929215A and other supporting
8 data, and any revisions thereto, are hereby adopted by reference and
9 declared to be a part of this Ordinance and those areas developed into
10 lots or building sites without minimum floor elevations engineered from a
11 master storm water drainage network.

12 **C. Designation of Flood Damage Prevention Board and**
13 **Administrator:**

14 The governing body of Palm Beach County hereby appoints the
15 seven (7) members of the Construction Board of Adjustment and
16 Appeals to act as the Flood Damage Prevention Board. The Building
17 Official of Palm Beach County, or his/her designee holding FEMA
18 Certified Floodplain Manager designation, shall be the Flood Damage
19 Prevention Administrator.

20 **D. Requirement for Building Permit and Elevation**
21 **Confirmation:**

22 A building permit shall be required in conformance with the
23 provisions of this Ordinance and building codes prior to the
24 commencement of any building activities. All required minimum
25 elevations for building floors or components shall be confirmed by a
26 certified survey prior to subsequent building inspections.

27 **E. Compliance:**

28 No structure or land shall hereafter be located, extended,
29 converted, developed, built or structurally altered without full compliance
30 with the terms of this Ordinance and other applicable regulations.

31 **F. Abrogation and Greater Restrictions:**

32 This Ordinance is not intended to repeal, abrogate, or impair any
33 existing easements, covenants or deed restrictions.

34 **G. Interpretation:**

1 In the interpretation and application of this Ordinance all
2 provisions shall be considered as minimum requirements, liberally
3 construed in favor of the governing body, and deemed neither to limit nor
4 repeal any other powers granted under state statutes. The Flood
5 Damage Prevention Administrator shall be responsible for
6 interpretations pertaining to this Ordinance.

1 **H. Warning and Disclaimer of Liability:**

2 The degree of flood protection required by this Ordinance is
3 considered reasonable for regulatory purposes and is based on
4 scientific and engineering considerations. Larger floods can and will
5 occur on rare occasions. Flood heights may be increased by man made
6 or natural causes. This Ordinance does not imply that land outside
7 SFHAs or uses permitted within such areas will be free from flooding or
8 flood damages. This Ordinance shall not create liability on the part of
9 the governing body of Palm Beach County or by any officer or employee
10 thereof for any flood damages that result from reliance on this
11 Ordinance or any administrative decision lawfully made thereunder.

12 **I. Penalties for Violation:**

13 Violation of this Ordinance or failure to comply with any of its
14 requirements, including violation of conditions and safeguards
15 established in connection with grants of variances shall be enforceable
16 pursuant to the Code Enforcement Procedures established in Chapter
17 162, Parts I and II, F.S., as amended or replaced and Article 10,
18 Chapter A, of the Palm Beach County Unified Land Development Code.
19 Each day such violation continues shall be considered a separate
20 offense. Nothing herein contained shall prevent the Flood Damage
21 Prevention Administrator or Palm Beach County from taking such other
22 lawful actions as are necessary to prevent or remedy any violation,
23 including enforcement pursuant to Section 125.69, F.S. as amended or
24 replaced. Any person who receives a conviction pursuant to Section
25 125.69, F.S., as amended or replaced, for violating this Ordinance or
26 failing to comply with any of its requirements shall, upon conviction
27 hereof, be fined not more than \$500 or imprisoned for not more than
28 sixty (60) days.

29 **SECTION 8. ADMINISTRATION:**

30 **A. Development Procedures:**

31 (1) Application for a building permit shall be made to the
32 Flood Damage Prevention Administrator on forms furnished by
33 him or her prior to any building activities. Such application may
34 include, but shall not be limited to: plans drawn to scale, and in
35 duplicate, showing the nature, location, dimensions, and

1 elevations of the area in question; existing and proposed
2 structures; existing and finished earth grades; drainage facilities;
3 and the location of the foregoing. Specifically, the following
4 information is required:

- 1 (1) Application Stage:
- 2 (a) On All Buildings: The proposed lowest floor
3 elevation (including any basement floor) shall be
4 clearly indicated on plans submitted with the
5 completed building permit application. Building
6 plans shall clearly indicate designed hydrostatic
7 opening for enclosed space below minimum floor
8 elevation. Said elevation shall be stated in
9 reference to NGVD, and the FEMA zone designation
10 of the site shall be stated.
- 11 (b) On Any Non-Residential Buildings to be Flood
12 Proofed: A certificate from a registered professional
13 engineer or architect shall be submitted detailing
14 compliance with flood proofing criteria in Sections
15 9B(2), 9C(2) and 9D(2) of this Ordinance.
- 16 (c) On Any Watercourse Alteration or Relocation: An
17 analysis from a qualified registered Florida
18 Professional Engineer of flood profiles and flow
19 velocities shall be submitted revealing no adverse
20 impact of proposed construction on adjacent and
21 upstream properties.
- 22 (2) Construction Stage:
- 23 (a) Lowest Floor Elevation Prior to Placement: A
24 certified survey or a registered Florida Professional
25 Engineer affidavit revealing the exact lowest floor
26 elevation, related to NGVD, shall be submitted. For
27 slab-on-grade floors, a tie-in statement to NGVD
28 elevation at the top of the form boards shall be
29 acceptable.
- 30 (b) In FEMA Designated V or A Zones: FEMA "Floor
31 Elevation Certification" and a certified final survey
32 shall be submitted detailing the as-built lowest floor
33 elevation, compliance details on any permitted flood
34 proofing of any non-residential building, plus finished
35 grade elevations at all building corners. Said

1 certification shall be fully executed by a registered
2 professional engineer or surveyor revealing
3 compliance with permitted elevation minimums prior
4 to approval of final inspections.

5 (c) In SFHA Outside FEMA V or A Zone: A certified
6 survey prepared by a registered professional
7 engineer or surveyor shall be acceptable (without
8 the FEMA "Floor Elevation Certification") to fully
9 reveal compliance with all minimum elevations
10 required on permit plans.

11 (d) On any Flood Proofed Buildings: In addition to the
12 requirements above, a certification of compliance
13 from a registered professional engineer or architect
14 on flood proofing features shall be submitted
15 revealing completed installations of said features
16 prior to approval of final inspections.

17 **B. Duties and Responsibilities of the Flood Damage**

18 **Prevention Administrator:**

19 Duties of the Flood Damage Prevention Administrator shall
20 include, but are not limited to:

21 (1) review of all building permits to assure that the
22 permit requirements of this Ordinance have been satisfied;

23 (2) advise permittee that additional federal, state or
24 local permits may be required, and if such additional permits are
25 necessary, require that copies of such permits be provided and
26 maintained on file with the building permit;

27 (3) verify and record the actual elevation (in relation to
28 NGVD) of the lowest floor on all new or substantially improved
29 buildings, in accordance with Section 8A(2) of this Ordinance;

30 (4) verify and record the actual elevation (in relation to
31 NGVD) to which the new or substantially improved non-residential
32 buildings have been flood-proofed, in accordance with Section
33 8A(2) of this Ordinance;

34 (5) review certified plans and specifications for
35 compliance;

1 (6) interpret the exact location of boundaries of SFHAs.
2 When there appears to be a conflict between a mapped boundary
3 and actual field conditions, the Flood Damage Prevention
4 Administrator shall make the necessary interpretation.

5 (7) When BFE data or floodway data have not been
6 provided in accordance with Section 7B of this Ordinance, the
7 Flood Damage Prevention Administrator shall obtain, review and
8 reasonably utilize any BFE and floodway data available from a
9 federal, state or any other source, in order to administer the
10 general provisions of Section 5 of this Ordinance; and shall
11 coordinate all change requests to the FIS and FIRM or FBFM or
12 both with the requester, State and FEMA. The Flood Damage
13 Prevention Administrator shall also decide engineered
14 acceptability on Alternate Methods of compliance with these
15 regulations following procedures in Florida Building Code Sec.
16 103.7 as amended or replaced but this shall not grant to the Flood
17 Damage Prevention Administrator the power to grant variances.

18 **SECTION 9. PROVISIONS FOR FLOOD DAMAGE PREVENTION:**

19 **A. General Standards:**

20 In all SFHAs the following provisions shall apply:

21 (1) New construction and substantial improvements
22 shall be anchored to prevent flotation, collapse or lateral
23 movement of the structure;

24 (2) Manufactured homes shall be anchored to prevent
25 flotation, collapse, or lateral movement by methods which may
26 include, but are not limited to, use of over-the-top or frame ties to
27 ground anchors. This standard shall be in addition to, and
28 consistent with, applicable state requirements for resisting wind
29 forces;

30 (3) New construction and substantial improvements
31 shall be constructed with materials and utility equipment resistant
32 to flood damage;

33 (4) New construction or substantial improvements
34 shall be constructed by methods and practices that minimize
35 flood damage with minimum floor elevations at or above those

1 required by any local drainage districts and at or above the
2 minimum set forth in the following Sections 9B through 9D of this
3 Ordinance.

4 (5) Electrical, heating, ventilation, plumbing, air
5 conditioning equipment and other service facilities shall be
6 designed and/or located so as to prevent water from entering or
7 accumulating within the components during conditions of
8 flooding by placement above minimum flood elevations;

9 (6) New and replacement water supply systems shall
10 be designed to minimize or eliminate infiltration of floodwaters
11 into the system in accordance with Palm Beach County Health
12 Department regulations;

13 (7) New and replacement sanitary sewage systems
14 shall be designed to minimize or eliminate any adverse impacts
15 from infiltration of floodwaters into the systems and discharges
16 from the systems into floodwaters;

17 (8) On site waste disposal systems shall be located
18 and constructed to avoid impairment to them or contamination
19 from them during flooding, in accordance with Palm Beach
20 County Health Department regulations;

21 (9) Any alteration, repair, reconstruction or
22 improvements to a building that is in compliance with the
23 provisions of this Ordinance shall meet the requirements of "new
24 construction" as contained in this Ordinance;

25 (10) Any alteration, repair, reconstruction or
26 improvements to a building that is not in compliance with the
27 provisions of this Ordinance, shall be undertaken only if said
28 non-conformity is not furthered, extended or replaced.

29 **B. Specific Standards in FEMA Areas: A1-99, AE or AH:**

30 In all these SFHAs, where BFE data has been provided, as set
31 forth in Section 7B of this Ordinance, the additional following provisions
32 shall apply:

33 (1) Residential Construction: New Buildings or substantial
34 improvement of any residential building (or manufactured home)
35 including duct work and Heating, Ventilating, and Air Condition

1 (HVAC) equipment, shall have the lowest floor, including
2 basement, elevated no lower than **twelve inches (12")** above the
3 BFE and not less than **eighteen inches (18")** above LARC.
4 Should solid foundation perimeter walls be used to elevate a
5 residential structure on a suspended elevated floor above an
6 open crawl space, openings sufficient to facilitate automatic
7 equalization of flood hydrostatic forces on both sides of the
8 exterior foundation walls shall be provided;

9 (2) Non-Residential Construction: New Buildings or substantial
10 improvements (including duct work and Heating, Ventilating, and
11 Air Condition (HVAC) equipment of any commercial, industrial, or
12 non-residential building shall have the lowest floor, including
13 basement, elevated to no lower than **twelve inches (12")** above
14 the BFE and not less than **eighteen inches (18")** above LARC.
15 Alternately, non-residential buildings located in all "A" Zones may
16 be flood-proofed in lieu of being elevated, provided that all areas
17 of the building components designed to be lower than **twelve**
18 **inches (12")** above BFE or lower than **eighteen inches (18")**
19 above LARC, are water tight with walls substantially impermeable
20 to the passage of water, and use structural components having
21 the capability of resisting hydrostatic and hydrodynamic loads and
22 the effect of buoyancy. A registered professional engineer or
23 architect shall sign, seal and certify that the standards of this
24 subsection are satisfied. Such certification shall be provided to
25 the Flood Damage Prevention Administrator prior to permitting, as
26 set forth in Section 8A(2) of this Ordinance.

27 (3) Elevated Buildings:

28 (a) New construction or substantial improvements of
29 elevated buildings that include enclosed areas
30 formed by foundation and other exterior walls below
31 the lowest floor elevation shall be designed to
32 preclude finished living space and designed to allow
33 for the entry and exit of floodwaters to automatically
34 equalize hydrostatic flood forces on exterior walls;

- 1 (b) Designs for compliance with this requirement shall
2 be signed, sealed and certified by a professional
3 engineer or architect and meet the following
4 minimum criteria:
- 5 1. Provide a minimum of two openings
6 having a total net area of not less than
7 one square inch for every square foot of
8 enclosed area subject to flooding;
 - 9 2. The bottom of all openings shall be no
10 higher than **twelve inches (12")** above
11 earth grade inside and outside
12 foundation walls;
 - 13 3. Openings may be equipped with screens,
14 louvers, valves, or other coverings or
15 devices, provided they provide the
16 required net area of the openings and
17 permit the automatic flow of floodwaters
18 in both directions;
 - 19 4. Access to the enclosed area shall be the
20 minimum necessary to allow for parking
21 of vehicles (garage door) or limited
22 storage of maintenance equipment used
23 in connection with the premises
24 (standard exterior door) or entry to the
25 living area (stairway or elevator);
 - 26 5. The interior portion of such enclosed
27 area shall not be partitioned or finished
28 into separate rooms;
 - 29 6. Where the open height below the lowest
30 floor elevation exceeds **six feet (6')**
31 above the HANG, a copy of the legally
32 recorded deed restriction prohibiting the
33 conversion of the area below the lowest
34 floor to a use or dimension contrary to
35 the building's originally approved design,

1 shall be presented by the permit holder
2 as a condition of issuance of the final
3 Certificate of Occupancy or Certificate of
4 Completion from the County.

5 (4) Standards for Manufactured Homes and Recreational
6 Vehicles;

7 (a) All manufactured homes placed, or substantially
8 improved, on individual lots or parcels, in expansions to
9 existing manufactured home parks or subdivisions, in a
10 new manufactured home park or subdivision, or in
11 substantially improved manufactured home parks or
12 subdivisions, shall meet all the requirements for new
13 construction, including elevation and anchoring and shall
14 be elevated so that the lowest floor of the manufactured
15 home is elevated no lower than **twelve inches (12")**
16 above the BFE and at least **eighteen inches (18")**
17 above LARC. The manufactured home chassis shall be
18 supported by reinforced piers, or other foundation
19 elements, of at least an equivalent strength, and not less
20 than **thirty-six inches (36")** in height above the grade;

21 (b) All recreational vehicles placed on sites shall either be
22 on the site for fewer than 180 consecutive days, or be
23 fully licensed and ready for highway use by virtue of
24 being on its wheels or jacking system, being attached to
25 the site only by quick disconnect type utilities and
26 security devices and has no permanently attached
27 additions.

28 (5) Floodways - Located within SFHAs as established in Section
29 7B of this Ordinance, may be areas designated as floodways.
30 Since the floodway is an extremely hazardous area due to the
31 velocity of floodwaters carrying debris, potential projectiles and
32 have significant erosion potential, the following additional
33 provisions shall apply:

34 (a) Encroachments shall be prohibited in floodways,
35 including fill, new construction, substantial improvements

1 and other developments unless certification with
2 supporting technical data by a registered professional
3 engineer is provided, demonstrating that the
4 encroachments shall not create any adverse impact by
5 any increase in flood levels during occurrence of the
6 base flood discharge;

7 (b) All new construction and substantial improvements shall
8 comply with all applicable flood hazard reduction
9 provisions of Section 9 of this Ordinance;

10 (c) Placement of manufactured homes (mobile homes) shall
11 be prohibited in floodways except in an existing
12 manufactured home (mobile home) park or subdivision.
13 A replacement manufactured home may be placed on a
14 lot in an existing manufactured home park or
15 subdivision, provided the standards of Section 9A(2) &
16 9A(3) of this Ordinance and the encroachment standards
17 of Section 9B(5a) of this Ordinance are met.

18 **C. Specific Standards in FEMA Area "A" Unnumbered:**

19 Within SFHAs established in Section 7B of this Ordinance,
20 where no BFE data or regulatory floodway has been provided,
21 designated as unnumbered A zones by the Federal Emergency
22 Management Agency (FEMA), the following provisions shall apply:

23 (1) When BFE data or floodway data have not been provided in
24 accordance with Section 7B of this Ordinance, the Flood Damage
25 Prevention Administrator shall:

26 (a) receive, review, and reasonably utilize any BFE and
27 floodway data available from any source, including a
28 federal or state agency. When such BFE is utilized to
29 obtain the elevation (in relation to the NGVD) of the
30 lowest floor (including the basement) of all new and
31 substantially improved structures;

32 (b) obtain, if the structure has been flood-proofed in
33 accordance with the requirements of Section 9B(2) of
34 this Ordinance, the elevation in relation to the NGVD to
35 which the structure has been flood-proofed;

- 1 (c) maintain a record of all such information;
- 2 (d) notify, in riverine situations, adjacent communities and
3 the Florida DCA Community Program Administrator prior
4 to any alteration or relocation of a watercourse, and
5 submit copies of such notifications to FEMA;
- 6 (e) assure that the flood carrying capacity within the altered
7 or relocated portion of any watercourse is maintained;
- 8 (2) When minimum floor elevation data is not available from any
9 source, the lowest floor of the structure shall be elevated to no
10 lower than **eighteen inches (18")** above the HANG, and at least
11 **eighteen inches (18")** above the LARC.

12 **D. Specific Standards in FEMA Area AO:**

13 Located within established SFHAs as defined in Section 7B of
14 this Ordinance are areas designated as areas of shallow flooding. These
15 areas have flood hazards associated with base flood depths of one to
16 three feet, where a clearly defined channel does not exist and the path of
17 flooding is unpredictable and indeterminate; therefore, the following
18 provisions apply:

- 19 (1) Residential: all new buildings and substantial improvements
20 of residential structures shall have the lowest floor, including
21 basement, elevated to at least **twelve inches (12")** above the
22 flood depth on the latest edition FIRM but not less than **eighteen**
23 **Inches (18")** above LARC. If no flood depth number is specified,
24 the lowest floor, including basement shall be elevated no less
25 than **twenty-four inches (24")** above the HANG, and to be at
26 least **eighteen inches (18")** above LARC;
- 27 (2) Non-residential: all new buildings and substantial
28 improvements of non-residential structures shall have the lowest
29 floor, including basement, elevated to at least **twelve inches**
30 **(12")** above the flood depth specified on the FIRM but not less
31 than **eighteen inches (18")** above LARC. If no flood depth
32 number is specified, the lowest floor, including basement, shall be
33 elevated at least **twenty-four inches (24")** above the HANG, and
34 shall be at least **eighteen inches (18")** above the LARC. Or,
35 together with attendant utility and sanitary facilities, the structures

1 may be completely flood-proofed to the specified flood level so
2 that any space below that level is watertight with walls
3 substantially impermeable to the passage of water and with
4 structural components having the capability of resisting
5 hydrostatic and hydrodynamic loads and effect of buoyancy.
6 Certification is required as per Section 8A(2) of this Ordinance.

7 **E. Specific Standards for FEMA Areas B or C:**

8 On sites located within FEMA designated B and C zones without
9 a master storm water drainage system, the following provisions shall
10 apply on all buildings: new construction or substantial improvements of
11 any building shall have the lowest floor, including basement, elevated not
12 lower than **eighteen inches (18")** above LARC. Flood proofing in
13 accordance with Section 9D(2) of this Ordinance above may be used on
14 non-residential buildings.

15 **F. Coastal High Hazard Areas, FEMA Zone V1-30, VE OR V:**

16 Located within established as defined in Section 7B of this
17 Ordinance, are Coastal High Hazard Areas, designated as Zones V1-
18 V30, VE, or V. These areas have special flood hazards associated with
19 high velocity waters from surges and, therefore, in addition to meeting all
20 provisions in this Ordinance, the following shall also apply:

21 (1) All new buildings and substantial improvements in
22 Zones V1-V30 and VE, V if BFE is available, shall be
23 elevated on pilings or columns so that the bottom of the
24 lowest horizontal structural member of the lowest floor,
25 excluding the pilings or columns, is elevated to at least
26 **twelve inches (12")** above the BFE. And a signed and
27 sealed certification from a licensed surveyor shall
28 confirm the required elevation before approval of the
29 floor inspection;

30 (2) The pile or column foundation and structure
31 attached thereto shall be anchored to resist flotation,
32 collapse, and lateral movement due to the effect of wind
33 and water loads acting simultaneously on all building
34 components. Wind and water loading values shall each
35 have a one percent (1%) chance of being equaled or

1 exceeded in any given year (one percent (1%) annual
2 chance). A registered professional engineer or architect
3 shall develop or review the structural design,
4 specifications and plans for construction, and shall
5 certify, by professional seal and signature, that the
6 design and methods of construction to be used are in
7 accordance with accepted standards of practice for
8 meeting the provisions of Section 9F(1) of this
9 Ordinance;

10 (3) All new construction shall be located landward of
11 the reach of mean high-tide;

12 (4) All new construction and substantial improvements
13 shall have the space below the lowest floor either free of
14 obstruction or constructed with non-supporting,
15 breakaway walls, open wood lattice work, or insect
16 screening intended to collapse under wind and water
17 loads without causing collapse, displacement, or other
18 structural damage to the elevated portion of the building
19 or supporting foundation system. For the purpose of this
20 section, a breakaway wall shall have a design safe
21 loading resistance of not less than ten (10) and not more
22 than twenty (20) pounds per square foot. Unless a
23 registered professional engineer or architect proves that
24 a design proposed with more than twenty (20) pounds
25 per square foot resistance meets the following
26 conditions: breakaway wall collapse shall result from
27 water load less than that which would occur during the
28 base flood; and the elevated portion of the building and
29 supporting foundation system shall not be subject to
30 collapse, displacement or other structural damage due to
31 the effect of wind and water loads acting simultaneously
32 on all building components (structural and non-
33 structural). Maximum wind and water loading values to
34 be used in this determination shall each have a one
35 percent (1%) chance of being equaled or exceeded in

1 any given year; The enclosed space below the lowest
2 floor shall be useable solely for parking of vehicles,
3 building access, or storage. Such space shall not be
4 partitioned into multiple rooms, temperature controlled,
5 or used for human habitation;

6 (5) Fill is prohibited for structural support of buildings;

7 (6) Man-made alteration of sand dunes that would
8 increase potential flood damage is prohibited;

9 (7) No manufactured homes shall be placed or
10 substantially improved upon outside manufactured home
11 parks existing prior to this Ordinance within Zones V1-
12 V30, V, and VE on the Palm Beach County FIRM;

13 (8) Any recreational vehicle located in any established
14 V zone as defined in Section 7B of this Ordinance shall
15 remain fully licensed and ready for highway use. Such
16 vehicles shall remain on its wheels or jacking system, be
17 attached to the site utilities only by quick disconnect type
18 devices without any permanent accessory attachments,
19 such as carports or screen rooms;

20 (9) Although raised septic mounds are allowed in any
21 established V zone as defined in Section 7B of this
22 Ordinance, they shall not be under buildings or directly
23 against any building foundation wall. Any such mounds
24 shall be placed so as to avoid any adverse impacts from
25 worsened flood conditions for any building.

26 **G. Standards for Streams With Established BFE Without**
27 **Regulatory Floodways:**

28 Within established SFHAs as defined in Section 7B of this
29 Ordinance, where streams exist for which BFE data has been provided
30 by FEMA without the delineation of the regulatory floodway, the following
31 provisions shall apply:

32 (1) Until a regulatory floodway is designated, no new
33 construction, substantial improvements, or other
34 development, including fill, shall be permitted within
35 established SFHAs as defined in Section 7B of his

1 Ordinance, unless it is demonstrated that the cumulative
2 effect of the proposed development, when combined
3 with all other existing and anticipated development will
4 not increase the water surface elevation of the base
5 flood more than **twelve inches (12")** at any point within
6 Palm Beach County;

7 (2) Development activities within established SFHAs as
8 defined in Section 7B of this Ordinance, which increase
9 the water surface elevation of the base flood by more
10 than **twelve inches (12")**, may be allowed, provided the
11 developer or applicant first applies, with Palm Beach
12 County endorsement, for a conditional FIRM revision,
13 and receives the approval of FEMA.

14 **H. Standards for Subdivision Proposals, GENERAL:**

15 All new subdivision proposals:

16 (1) shall be consistent with the need to minimize flood
17 damage;

18 (2) shall have public utilities and facilities such as
19 sewer, gas, electrical and water systems located and
20 constructed to minimize flood damage;

21 (3) shall have adequate master drainage systems
22 provided to minimize exposure to flood damage; and

23 (4) shall have BFE data provided for subdivision
24 proposals and other proposed development proposals,
25 including manufactured home park and subdivisions,
26 that exceed fifty (50) lots or five (5) acres, whichever is
27 the lesser, stating minimum floor elevations to reduce
28 flooding probability to less than one percent (1%) per
29 year; and the standards of South Florida Water
30 Management District, Palm Beach County Land
31 Development Division and local drainage districts shall
32 be met.

33 **I. Critical Facility:**

34 Construction of new critical facilities shall be, to the extent
35 possible, located outside the limits of SFHAs. Construction of new

1 critical facilities may be permissible within the SFHA if no feasible
2 alternative site is available. Critical facilities constructed within SFHAs
3 shall have the lowest floor elevated three (3) or more feet above the level
4 of the BFE at the site. Flood-proofing and sealing measures shall be
5 taken to ensure that toxic substances will not be displaced by or released
6 into floodwaters. Access routes elevated to or above the level of the
7 BFE shall be provided to all critical facilities.

8 **SECTION 10. GRADING AND EARTH FILL RESTRICTIONS:**

9 **A. Grading:**

10 On all new permitted construction, regardless of flood zone
11 designation, grading shall keep all rainfall and runoff flow on the building
12 site, until discharged into the roadway drainage system or to public
13 drainage ways adjacent to the property lines. Berms shall be
14 constructed along lot lines, if necessary, to prevent storm water flow
15 directly onto adjacent properties. Erosion sedimentation off the building
16 site shall be controlled until vegetative cover is established. The Flood
17 Damage Prevention Administrator may require grading plans showing
18 pre-construction and proposed finish earth grades.

19 **B. Earth Fill:**

20 On all new construction, earth fill brought onto the site of
21 construction from another site shall be minimized to maximize existing
22 floodwater storage capacity. Maximum volume of imported fill shall be
23 limited to that necessary to raise an earth pad to elevate the slab-on-
24 grade, not more than six inches (6") above minimum floor elevation set
25 in this Ordinance, with side slopes of the pad of 1:5 to 1:3 starting ten
26 feet (10') from the slab edges.

27 **C. Exceptions From This Section's Requirements:**

28 (1) Only on building sites requiring raised septic
29 mounds to Palm Beach County Health Department
30 minimum elevations, will additional volume of fill be
31 allowed to construct the mound;

32 (2) Earth fill dug from an on-site excavation shall be
33 unregulated if in accordance with Palm Beach County
34 Unified Land Development Code regulations and

1 provided finish grade directs lot drainage back into the
2 excavation;

3 (3) Any volume of fill for placement inside the perimeter
4 foundation walls to raise an interior concrete slab to any
5 higher elevation shall be allowed;

6 (4) Fill shall be permitted to raise earthen berms on
7 side property lines to prevent drainage onto adjacent
8 lots, provided said berms have side slopes of 1:5 to 1:3,
9 with a triangular cross section;

10 (5) Fill shall be allowed inside retaining walls for
11 American Disabilities Act (ADA) required building access
12 ramps or driveway ramps;

13 (6) Fill necessary to direct on site drainage to the public
14 roadway or drainage system shall also be permitted;

15 (7) Minimum fill for sites that have sloping topography
16 that do not store floodwater shall be permitted. Any fill in
17 excess of this minimum grading requirement shall be
18 subject to approval of the Flood Damage Preventions
19 Board as a variance;

20 (8) Fill necessary for critical facilities and public service
21 buildings; and

22 (9) Areas included within a South Florida Water
23 Management District permit shall be filled and graded in
24 accordance with the fill and grading design conditions
25 identified in said permit even when elevations are more
26 than **six inches (6")** above the flood minimum set in
27 Section 10B of this Ordinance.

28 **SECTION 11. APPEAL AND VARIANCE PROCEDURES:**

29 **A. Flood Damage Prevention Board:**

30 The Flood Damage Prevention Board shall hear and decide
31 appeals when it is alleged an error in any requirement, decision, or
32 determination is made by the Flood Damage Prevention Administrator in
33 the enforcement or administration of this Ordinance and shall decide any
34 variance request following procedures in Section 108, Florida Building
35 Code as amended by Palm Beach County.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

B. Appeals Procedures:

(1) A request for appeal to the decision of the Flood Damage Prevention Administrator enforcing the provisions of this Ordinance shall include the Ordinance section of the appeal, and the applicant's technical basis of contesting the decision of the Flood Damage Prevention Administrator. The appeal is to be filed in writing within thirty (30) calendar days after the decision is rendered by the Flood Damage Prevention Administrator whenever any one of the following conditions are claimed to exist:

- (a) The Flood Damage Prevention Administrator rejected or refused to approve the applicant's request;
- (b) The provisions of this Ordinance do not apply to the applicant's specific case;
- (c) That an equally good or more desirable method can be employed and fully meet the intent of this Ordinance, which the Flood Damage Prevention Administrator has rejected;
- (d) The true intent and meaning of this Ordinance or any of the regulations there under have been misconstrued or incorrectly interpreted.

(2) The Flood Damage Prevention Board shall hear appeals requests at the next available meeting within sixty (60) days of date of appeal;

(3) At the conclusion of the hearing, the Flood Damage Prevention Board shall orally render an order based on evidence entered into the record. An order setting forth findings of fact and conclusion of law shall then be mailed to the appellant.

(4) Any persons aggrieved by an appeals decision of the Flood Damage Prevention Board may appeal such decision to the Circuit Court of Palm Beach County Florida by writ of Certiorari; any appeal filed pursuant to this article shall be

1 considered timely if filed within thirty (30) calendar days of the
2 execution of the order to be appealed.

3 **C. Variance Procedures:**

4 (1) An initial request for a variance from the provisions
5 of this Ordinance shall be filed in writing by the affected party
6 with the Flood Damage Prevention Administrator;

7 (2) The Flood Damage Prevention Board shall hear
8 variance requests at the next available meeting. In acting upon
9 variance applications, the Flood Damage Prevention Board
10 shall consider all technical evaluations, all relevant factors, and
11 standards specified in other sections of this Ordinance; and

- 12 (a) The danger that materials may be swept onto
13 other lands to the injury of others;
- 14 (b) The danger to life and property due to flooding
15 or erosion damage;
- 16 (c) The susceptibility of the proposed facility and its
17 contents to flood damage and the effect of such
18 damage on the individual owner;
- 19 (d) The importance of the services provided by the
20 proposed facility to the community;
- 21 (e) The necessity to the facility of a waterfront
22 location;
- 23 (f) The availability of alternative locations for the
24 proposed use which are not subject to flooding
25 or erosion damage;
- 26 (g) The compatibility of the proposed use with
27 existing and anticipated development;
- 28 (h) The relationship of the proposed use to the
29 comprehensive plan and floodplain
30 management program for that area;
- 31 (i) The safety of access to the property in times of
32 flood for ordinary and emergency vehicles;
- 33 (j) The expected heights, velocity, duration, rate of
34 rise, and sediment of transport of the

1 floodwaters and the effects of wave action, if
2 applicable, expected at the site;

3 (k) The costs of providing governmental services
4 during and after flood conditions, including
5 maintenance and repair of public utilities and
6 facilities such as sewer, gas, electric, and water
7 systems, and streets and bridges; and

8 (l) The negative effect a variance may have on
9 the county rating under the FEMA Community
10 Rating System.

11 (5) Any persons aggrieved by an appeals decision of
12 the Flood Damage Prevention Board may appeal such decision
13 to the Circuit Court of Palm Beach County Florida by writ of
14 Certiorari; any appeal filed pursuant to this article shall be
15 considered timely if filed within thirty (30) days of the execution
16 of the order to be appealed.

17 **D. Conditions for Variances:**

18 Variances shall only be issued when there is:

19 (1) A showing of good and sufficient cause;

20 (2) A determination that failure to grant the variance
21 would result in exceptional hardship as defined in Section 6 of
22 this Ordinance;

23 (3) A determination that the granting of a variance will
24 not result in increased flood heights, additional threats to public
25 expense, create nuisance, cause fraud on or victimization of
26 the public or conflict with existing laws or ordinances;

27 (4) Variances shall only be issued upon a
28 determination that the variance is the minimum necessary
29 deviation from the requirements of this Ordinance;

30 (5) Any applicant to whom a variance is granted shall
31 be given written notice specifying the difference between the
32 BFE and the elevation to which the lowest floor is to be built,
33 and stating that the cost of flood insurance will be
34 commensurate with the increased risk resulting from the
35 reduced lowest floor elevation;

1 (6) Variances shall not be granted after-the-fact;

2 (7) The Flood Damage Prevention Board may attach
3 such conditions to the granting of variances, as it deems
4 necessary to further the objective of this Ordinance. The Flood
5 Damage Prevention Administrator shall maintain the records of
6 all variance actions.

7 **E. Variance Notification:**

8 Any applicant to whom a variance is granted, shall be given a
9 written order bearing the signature of the Flood Damage Prevention
10 Board Chairperson that the issuance of a variance to construct a
11 structure failing to meet requirements of this Ordinance may result in
12 substantial increase in flood insurance premium rates, and such
13 noncompliance construction increases risks to life and property. A copy
14 of the notice shall be recorded by the Flood Damage Prevention
15 Administrator in the Office of the Palm Beach County Clerk and shall be
16 recorded in a manner so that it appears in the chain of title of the
17 affected parcel of land in the official records of Palm Beach County. The
18 Flood Damage Prevention Administrator will maintain a record of all
19 variance actions, including justification for their issuance, and report such
20 variances issued in its biennial report submitted to FEMA.

21 **F. Historic Structures:**

22 Variances may be issued for the repair or rehabilitation of historic
23 structures upon a determination that the proposed repair or rehabilitation
24 shall not preclude the structure's continued designation as a historic
25 structure.

26 **G. Structures in Regulatory Floodway:**

27 Variances shall not be issued within any designated floodway if
28 any impact in flood conditions or increase in flood levels during the base
29 flood discharge would result.

30 **SECTION 12. PROVIDING FOR A SAVINGS CLAUSE:**

31 Notwithstanding anything to the contrary, all provisions of Article
32 VI, Chapter 7 of the Palm Beach County Code, codifying Ordinance No.
33 88-3, are

1 specifically preserved and remain in full force and effect for the limited purpose
2 of enforcing any alleged violations, variances and appeals granted or pending.
3 of said Code, which occurred prior to its repeal.

4 **SECTION 13. PROVIDING FOR CODES IN CONFLICT:**

5 Should other local laws and ordinances conflict with any provisions of
6 this Ordinance, the more stringent restrictions shall prevail.

7 **SECTION 14. SEVERABILITY:**

8 If any section, clause, sentence, or phrase of the Ordinance is held to be
9 invalid or unconstitutional by any court of competent jurisdiction, then said holding
10 shall in no way affect the validity of the remaining portions of this Ordinance.

11 **SECTION 15. PROVIDING FOR INCLUSION IN THE ULDC:**

12 The provisions of this Ordinance shall become and be made part of the
13 ULDC (Unified Land Development Code). The sections of this Ordinance may
14 be renumbered or re-lettered to accomplish such, and the word "ordinance"
15 may be changed to "section," "article," or other appropriate word.

16 **SECTION 16. EFFECTIVE DATE:**

17 The provisions of this Ordinance shall become effective July 1, 2004.

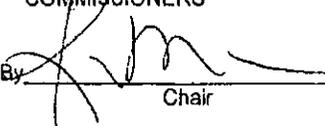
18 **APPROVED and ADOPTED** by the Board of County Commissioners of
19 Palm Beach County, Florida, on this 16 day of June, 2004.

20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

DOROTHY H. WILKEN, CLERK

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: 
Deputy Clerk


By: 
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
Assistant County Attorney

EFFECTIVE DATE: On the 1st day of July, 2004



ULDC REVIEW COMMITTEE

Item 2. Ordinance No. 2010-002 – Pain Management Clinics

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2010-002

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, DECLARING A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF A PAIN MANAGEMENT CLINIC AS DEFINED HEREIN; PROVIDING THAT THE MORATORIUM SHALL BE IN EFFECT FOR A PERIOD WHICH SHALL TERMINATE ON THE EFFECTIVE DATE OF TOWN'S OWN REGULATIONS FOR PAIN MANAGEMENT CLINICS; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in the Spring of 2009, the State Attorney's Office for the 17th Judicial Circuit in Broward County, Florida, issued an interim report on "The Proliferation of Pain Clinics in South Florida," in which it set forth the following facts: (i) from August 2008 to November 2009, one (1) new pain clinic is open in Broward and Palm Beach counties every three (3) days, (ii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the country, (iii) in 2008, prescription drugs were attributed to an average of 135 deaths per day in Florida, and (iv) pain clinics are migrating north from Broward County to major metropolitan areas; and

WHEREAS, the Town Council has recently been made aware that a pattern of illegal drug use and distribution has been associated with some pain management clinics in South Florida, which dispense narcotic drugs on-site; and

WHEREAS, news media such as the Miami Herald, the Sun Sentinel, and the Palm Beach Post have published numerous newspaper articles in recent months describing the "pipeline" trafficking drugs from some South Florida pain management clinics to users from other states such as Kentucky, West Virginia and Ohio, including a report in the Palm Beach Post published on December 13, 2009; and

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2010-002

WHEREAS, the threat of illegal narcotic activity and increased crime associated with such clinics is significant and should undermine the economic health of the Town; and

WHEREAS, the Town Administration is directed to analyze the potential effects of pain management clinics in the Town to analyze the criteria for regulations in connection with the issuance of any development permits, business licenses, or approvals for the location of pain management clinics within the Town, and to make recommendations which will better promote the health, safety, morals, and general welfare of the Town; and

WHEREAS, Palm Beach County, and several municipalities within Palm Beach County, have also issued a moratorium for pain management clinics and as a result, in the absence of similar action by the Town, the Town could become a prime location for pain management clinics in Palm Beach County; and

WHEREAS, while Town Administration is undergoing its analysis, and in order to prevent the occurrence during this period of uses which are incompatible with the intent of the Town's zoning and land development regulations, it is necessary to establish a moratorium and zoning in progress which prevents the granting of development permits or approvals for pain management clinics, as defined herein, in the Town, during this period; and

WHEREAS, it is not the intent of this moratorium to interfere with legitimate medical clinics nor the legal use of controlled substances; and

WHEREAS, the Town Council finds and declares a need to temporarily suspend the issuance of permits or approvals for pain management clinics, as defined herein, until such time appropriate regulations can be adopted, to provide for the Town to review zoning and land development regulations in connection with pain management clinics.

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2010-002

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:

Section 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. **Legislative Findings of Fact.** The Town Council finds and declares that:

(1) All of the statements set forth in the recitals to this Ordinance are true and correct.

(2) For purposes set forth herein, it is in the best interest of the general public and there exists a need to declare a moratorium on the issuance of permits or approvals for pain management clinics in order for the Town Administration to examine and make recommendations to the Town Council as to potential criteria to be considered for the establishment of pain management clinics.

Section 3. **Intent and Purpose.** It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents of the Town of Loxahatchee Groves through the analysis of any impacts on the Town from pain management clinics, and through consideration of criteria for pain management clinic uses within the Town.

Section 4. **Definition.** “Pain management clinic” means a privately owned pain-management clinic, facility or office, which advertises in any medium for any type of pain-management services, or employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and is required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 458.005, Fla. Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2010-002

substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer, which persists beyond the usual course of the disease of the injury that is the cause of the pain for more than 90 days after surgery.

Section 5. Boundaries. This Ordinance shall be applicable to all properties located within the boundaries of the Town of Loxahatchee Groves.

Section 6. Zoning in Progress and Moratorium Declared. The Town Council hereby imposes a zoning in progress and moratorium upon the acceptance of applications and the issuance of permits or approvals for pain management clinics as to any property located in whole or in part within the Town.

Section 7. Repeal of Ordinance. This Ordinance shall stand repealed as of the effective date of the land use regulations governing pain management clinics adopted by the Town Council.

Section 8. Repeal of Laws in Conflict. All Ordinances or part of Ordinances in conflict herewith are in the same are hereby repealed to the extent of such conflict.

Section 9. Severability. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 10. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS 2nd DAY OF March , 2010.

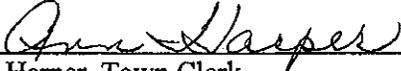
TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2010-002

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN
LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS
16th DAY OF March, 2010.

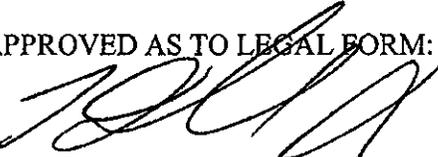
TOWN OF LOXAHATCHEE GROVES,
FLORIDA

ATTEST:


Ann Harper, Town Clerk

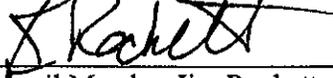

Mayor David Browning


Vice Mayor Dennis Lipp

APPROVED AS TO LEGAL FORM:

Michael D. Cirullo, Town Attorney


Council Member Ron Jarriel


Council Member Ryan Liang


Council Member Jim Rockett

MDC:aw
H:\2007\070240.LOX\ORD 2010\2010-002 (pain clinic).doc



ULDC REVIEW COMMITTEE

Item 3. ULDC Article 87

Loxahatchee Groves, Florida, Unified Land Development Code >> PART III - SUPPLEMENTAL REGULATIONS >>
Article 87 - NATIVE TREE PRESERVATION, SOIL STABILIZATION AND INVASIVE EXOTIC REMOVAL >>

Article 87 - NATIVE TREE PRESERVATION, SOIL STABILIZATION AND INVASIVE EXOTIC REMOVAL ¹¹

[Section 87-005. - General.](#)

[Section 87-010. - Definitions.](#)

[Section 87-015. - Permitted, exempt and prohibited activities.](#)

[Section 87-020. - Application requirements and fees.](#)

[Section 87-025. - Standards and conditions.](#)

[Section 87-030. - Tree mitigation.](#)

[Section 87-035. - Appeals.](#)

[Section 87-040. - Violations.](#)

Section 87-005. - General.

- (A) *Goals.* The goals of this article are:
- (1) To avoid the unnecessary destruction of native vegetation;
 - (2) To encourage eradication of invasive non-native vegetation;
 - (3) To minimize adverse impacts to native vegetation during parcel improvements;
 - (4) To mitigate the removal of native vegetation; and
 - (5) To protect exposed and disturbed soils from stormwater or wind forces.
- (B) *Purpose.* This article shall:
- (1) Establish a program to preserve and protect native vegetation;
 - (2) Prohibit unnecessary destruction of native vegetation;
 - (3) Establish the standards for the eradication of invasive non-native vegetation;
 - (4) Establish the standards to mitigate for the removal of native trees; and
 - (5) Encourage procedures to minimize siltation and sedimentation from disturbed and exposed soil surfaces.
- (C) *Applicability.*
- (1) This article shall apply within the corporate boundaries of the Town of Loxahatchee Groves, Florida, hereinafter referred to as the "Town".
 - (2) The Town shall have regulatory authority over the alteration, abuse or removal of non-native and native upland vegetation, and the stabilization of exposed soil surface areas.
 - (3) No person may conduct land clearing or tree trimming operations unless such operation is exempted by, or expressly approved by this article.
 - (4) The provisions of this article may be suspended or waived by the Town Manager during a period of officially declared emergency, such as a hurricane, windstorm, tropical storm, flood, wildfire or similar disaster.
- (D) *Authority.* This article is adopted under the authority of F.S. ch. 166, as amended. The Town shall administer the requirements of this article.

(Ord. No. 2010-008, § 2(Exh. A, § 1), 10-5-2010)

Section 87-010. - Definitions.

For the purpose of this article the definitions in this section shall apply unless the context clearly indicates or requires a different meaning. In construing the provisions of this article, if no definition is provided herein and when

context will permit, publications recognized as authoritative in the scientific and engineering fields shall apply. Such publications shall include: "Dig Manual" by the State of Florida, "ANSI A300-Trees, Shrubs and Other Woody Plant Maintenance—Standard Practices" by the American National Standards Institute, "Grades and Standards for Nursery Plants—Parts I and II" by the Florida Department of Agriculture, and Chapter 62 of the Florida Administrative Code.

Agriculture, bona fide. Bona fide agriculture are those uses conducted on lands which are engaged in farming as defined in F.S. § 823.14(3).

Clear trunk. The distance between the top of the root ball along the vertical trunk or trunks of a tree to the point at which lateral branching or fronds begin.

Champion tree. A champion tree is the largest tree of its species within the state as recognized by the Florida Department of Agriculture's Division of Forestry based on trunk circumference, vertical tree height, and average crown spread.

Crown spread. The average distance of the diameter of the extent of the upper portion of a tree, consisting of limbs, branches, and leaves.

Diameter breast height (DBH). The diameter, in inches, of the trunk of a tree measured at a height of four and one-half feet above the natural grade (breast height). The DBH of trees with multiple trunks shall be the sum of the individual trunk diameters at breast height. Trees with less than four and one-half feet of clear trunk shall be measured as the diameter of the largest vertical branch or leader at breast height.

Effectively destroy. To purposefully cause, suffer, allow, or permit any act which will cause a tree to die or go into a period of unnatural decline within a period of one year from the date of the act. Destruction by naturally occurring diseases, or acts of nature such as storm events or lightning strikes are not considered purposeful acts of destruction. Examples of such acts may include but are not limited to:

- (1) Girdling of trees by improper guying, staking, support, string trimmers, or non-removal of planting materials from root balls and uncontrollable livestock.
- (2) Introduction of any type of poison or reactive material for the purpose of causing the tree to die or become diseased.
- (3) Placement of excess materials or soils within the tree drip line causing the death or disease of the tree.
- (4) Peeling or stripping of bark to the extent that if a line is drawn at any height around the circumference of the tree, over one-third of the length of the line falls on portions of the tree where bark no longer remains.
- (5) Removal of the majority or near entirety of canopy.

Invasive non-native vegetation. For the purposes of this article, only those species included but not limited to those identified in F.S. § 369.251 shall be recognized as invasive non-native vegetation within the Town.

Land clearing. The removal of trees, shrubs, and/or undergrowth by stripping or any other process, with the intention of preparing real property for development, as defined in F.S. § 380.04. Land clearing shall not include the selective removal of non-native tree and shrub species when the soil is left relatively undisturbed, the removal of dead or nuisance trees; or normal mowing operations.

Mulch. Non-living organic material customarily used in landscape design to retard erosion, retain moisture and control weeds.

Tree. Any living, self-supporting woody perennial plant which at maturity attains a trunk diameter at least one and one-half inches or more when measured at a point four and one-half feet above ground level and which normally attains an overall height of at least 15 feet, usually with one main stem or trunk and many branches.

Tree, specimen. A tree recognized as very old, exceptionally beautiful, tall or large.

Wetland, jurisdictional. A jurisdictional wetland, is defined in subsection F.S. § 373.019(25), as may be amended .

(Ord. No. 2012-008, § 2(f)(4), A, § 2, 10-5-2012)

Section 87-015. - Permitted, exempt and prohibited activities.

- (A) *General permit.* A general permit is required for upland land clearing that does not qualify for an exemption under this article. Prior to applying for a permit from the Town, the applicant must obtain all required permits and authorizations from external agencies having jurisdiction for the proposed work. The Town will maintain a general list of permits that may be required
- (1) Tree mitigation, as specified in [Section 87-030](#), shall be required for all work conducted under a general permit.
 - (2) In conjunction with the construction of any structure, a general permit also requires the removal or eradication of invasive non-native vegetation for the area of the authorized site plan extending out from the structure a distance of 40 feet. The parcel owner shall thereafter maintain this area free of invasive non-native vegetation.
- (B) *Vegetative permit.* A residential landowner may apply for a vegetative permit for clearing and control of invasive exotic plant species and the selective relocation of native plant material within the property. A tree survey is not required
- (C) *Exempt activities.* The following activities do not require a permit under this article.
- (1) Vegetation alteration associated with Botanical Gardens, Botanical Research Centers, Licensed Commercial Nurseries, or Bona fide Agricultural Operations that is a part of the on-going activities of the existing operation including the maintenance and upkeep of agricultural and pasture lands. Initial clearing of a parcel not previously used for these purposes is not an exempt activity.
 - (2) The minimal removal of native trees or understory necessary to install a fence, provided that the path cleared for the fence does not exceed five feet in width. Clearing required for building accessory structures on residential property is exempted from requiring a permit. Traversing a jurisdictional wetland requires approval from the applicable agency.
 - (3) The removal of dead and hazard trees that constitutes a peril to life or property.
 - (4) Wetland mitigation or enhancement activities conducted pursuant to a permit from the South Florida Water Management District or the Florida Department of Environmental Protection under Chapter 62-312, F.A.C. as amended.
 - (5) Alteration of vegetation pursuant to an adopted management plan for government maintained parks, recreation areas, wildlife management areas, conservation areas and preserves, excluding new construction or parcel improvement.
 - (6) Pruning of all trees in accordance with the American National Standards Institute (ANSI) A300, to allow for healthy growth, to promote safety, and to remove dead or hazard trees.
 - (7) Routine maintenance mowing operations or "bush hog" type mowing operations in areas that are regularly maintained.
 - (8) Pruning and removal of vegetation within a utility easement, for maintenance and where the vegetation is interfering with services provided by a utility. Including public utility, water control, water management, and road right-of-way activities within utility and drainage easements.
 - (9) The necessary minimal removal of vegetation by, or at the direction of, a State of Florida licensed professional surveyor and mapper, professional geologist, or professional engineer to conduct a survey or other required test.
 - (10) Management activities in areas designated by deed restriction, plat, restrictive covenant, or conservation easement dedicated to a public entity or approved private conservation group for preservation provided the activity furthers the natural values and functions of the ecological communities present, such as clearing firebreaks for prescribed burns or construction of fences; and

the preserve area has a preserve management plan approved by the Town, or another governmental entity.

- (11) Selective tree removal for forest management activities as defined in the current Forest Management Plan as approved by the State of Florida Division of Forestry.
 - (12) Removal of vegetation certified by the Florida Department of Forestry or PBC Fire Rescue such that a 30-foot buffer should be cleared around designated structures through the Fire Wise program.
 - (13) Removal or trimming of non-native and invasive vegetation.
 - (14) Routine landscape maintenance activities such as edging, hedge trimming, and on-going gardening operations.
- (D) *Prohibited activities.* The purposeful planting or installation and cultivation of vegetation identified as invasive non-native vegetation is prohibited.

(Ord. No. 2010-008, § 2(Exh. A, § 3), 10-5-2010)

Section 87-020. - Application requirements and fees.

- (A) *Application requirements.* The following application requirements apply.
- (1) Permit applications shall be made on forms provided by the Town.
 - (2) An application shall not be deemed complete until the application fee and all information necessary to understand the extent, nature and potential impacts of a proposed project are received by the Town. Application information may include, but is not limited to:
 - a. A completed application form with the signature of the parcel owner, or authorized agent of the parcel owner with agent authorization letter;
 - b. A description of the work to be performed;
 - c. Parcel information including legal description and a location map;
 - d. Identification of the type, size and location of native trees that are three inches DBH and greater to be removed with representative color photographs; and
 - e. A tree replacement or tree relocation table, if applicable.
- (B) *Fees.* Permit application filing fees shall be required, as established by a Resolution of the Town Council. Fees shall be non-refundable and non-transferable. An additional administrative fee may be required where projects require specific detailed site plan assistance by the Town, or where site plans significantly change after initial review pursuant to the Town's cost recovery policies. Application fees paid by check shall be payable to the Town of Loxahatchee Groves.
- (C) *Inspections.* An application for a vegetation removal permit constitutes consent by the property owner and/or applicant for the Town to conduct site inspections in furtherance of this article on the subject property, pursuant to permit requirements.

(Ord. No. 2010-008, § 2(Exh. A, § 4), 10-5-2010)

Section 87-025. - Standards and conditions.

- (A) *Standards of permit issuance.*
- (1) A permit will be in effect for up one year after the issuance date. The Town may extend the authorization for one year upon written request submitted at least 30 days prior to expiration of the permit.
 - (2) Trees authorized for removal during the effective dates of a permit may not be removed after the expiration of the permit without issuance of a new permit based upon a new application.
 - (3) Any application received that is substantially the same as a previous application that has been denied by the Town subsequent to the effective date of this article shall be denied with a written response provided to the applicant stating the reason for denial.
 - (4) Any parcel where there is an unresolved violation of any chapter administered by the Town, shall not be eligible for a permit under this article until such violation has been resolved.

- (5) Any application containing false information, or any permit issued based upon false information, may be denied or revoked and may subject the applicant to enforcement proceedings pursuant to the provisions of this Code.
- (B) *Permit conditions.* The Town may include, but not be limited to the following permit conditions with the approval of a permit.
- (1) Conditions reasonably necessary to protect the environmental integrity of any on-site or adjacent wetlands, mitigation areas and preserve areas, and to prevent potential harm to native plant and animal species.
 - (2) Conditions for vegetation debris removal.
 - (3) The use of barriers and flagging during construction to establish appropriate setbacks to protect and preserve existing native vegetation.
 - (4) Conditions reasonably necessary to stabilize exposed and disturbed land surfaces.
A performance guarantee in an amount equal 110 percent of the cost of the required tree mitigation for tree removal on vacant lands.
- (C) *Land clearing standards.* The landowner shall take all reasonable measures during the land clearing process to avoid damage to trees and other native vegetation designated to remain after construction, and to protect exposed and disturbed soils from stormwater and wind forces.
- (1) Best management practices shall be implemented to protect exposed and disturbed soils from stormwater or wind forces during construction.
 - (2) The design plan shall limit the removal of existing native vegetation only to that area needed to implement the project.
 - (3) The design plan shall strive to maximize removals from any areas dominated by invasive non-native vegetation.
 - (4) Native trees in the footprint of the proposed development that can reasonably be transplanted with an anticipated high degree of success should be incorporated into other areas on the parcel to the maximum extent practicable. If movement is not practical, trees should be replaced and by a greater number and on the same property. (See Section 87-0306(B), tree replacement, for trees that die within one year of relocation.)
 - (5) All exposed and disturbed surfaces shall be mulched, seeded, sodded, vegetated or otherwise stabilized by the time of Certificate of Occupancy or final inspection. Failure to stabilize disturbed surfaces, as well as the removal of vegetation resulting in on-site or off-site erosion (sedimentation or siltation or both) or the windblown loss of soil shall be deemed a violation of this article.
- (D) *Vacant land standards.* The speculative removal of native vegetation in advance of parcel improvement on vacant lands is not consistent with the goals of this article. However, certain conditions can provide assurances that parcel improvement will proceed in good faith. A general permit will not be issued by the Town in advance of issuance of a land development permit or building permit unless the following is provided:
- (1) Evidence that the anticipated work for which the land clearing permit is sought shall commence within one year of issuance of the general permit;
 - (2) A performance guarantee in an amount equal to 110 percent of the cost to restore native vegetation on the parcel in the event that improvement of the parcel is abandoned or the permits expired. Deposits should be refunded upon completion of the structure to allow purchaser to buy the trees. CO will be withheld until trees are purchased.
 - a. The performance guarantee shall be executed by a person with a bona fide legal interest in the parcel.
 - b. Two estimates of the cost to restore native vegetation on the parcel may be required for purposes of establishing the applicable amount of the performance guarantee.
 - c. The form of guarantee shall be:
 1. A cash deposit or certificate of deposit assigned to the Town; or
 - 2.

An escrow agreement for the benefit of the Town, in a form satisfactory to the Town Attorney and approved by the Town Council; or

3. A performance bond issued by a State of Florida registered guarantee company in a form satisfactory to the Town Attorney and approved by the Town Council; or
 4. An irrevocable letter of credit in a form satisfactory to the Town Attorney and approved by the Town Council.
- (3) The performance guarantee shall be kept in full force until authorized site improvements commence on the parcel and any required tree mitigation is installed.
- (4) The vacant land standards of this section only apply to general permit activities.
- (5) Parcels of vacant land shall be allowed to remove overgrown herbaceous understory vegetation to preserve tree canopy in areas where natural fire has been suppressed and where a prescribed burn would not be feasible. No healthy trees that have six inches DBH or greater are to be removed or damaged.
- (E) *Off-site tree relocation.* Re-locatable native vegetation that cannot be incorporated into the parcel may be relocated off-site. An applicant requesting off-site relocation shall provide reasonable evidence that on-site planting is not feasible.
- (1) An applicant conducting tree relocation shall provide a tree relocation management plan which shall include, but not be limited to, the relocation schedule and likelihood of success for each relocated tree, installation location of each relocated tree, identification and size of each relocated tree, and the replacements required pursuant to Table A-2. Tree Replacement per this article to be implemented if the relocated material does not survive for a period of at least one year from the date of relocation.
 - (2) An applicant conducting tree relocation shall provide irrigation, mulch, and other practical means to assist the survival of any relocated tree.
 - (3) The Town shall retain jurisdiction to ensure compliance with any tree replacement required by this subsection.
 - (4) All off-site relocation requires approval by the Town Council.
 - (5) Off-site relocation shall optimally be placed in or adjacent to a public park parcel or a preserve or mitigation area.
 - (6) All off-site relocation shall be located within the Town or the Town needs to be compensated for tree loss. Exceptions are permitted at the discretion of the Town Council.
- (F) *Debris disposal.* Every effort shall be made by the landowner to minimize the amount of land clearing debris deposited in a landfill. Mulching or other appropriate utilization should be pursued whenever feasible.
- (1) The Town may include permit conditions for vegetation debris disposal by open burning, but the conditions shall not be in conflict with required burn permits from jurisdictional agencies.
 - (2) The burying of rubbish, logs, lumber, underbrush or other organic matter and materials from pruning, clearing or grubbing operations which would decompose or allow the land to thereafter settle is determined to be change or modification of the grade of the land and is not authorized under this article.
 - (3) All felled materials shall be promptly and carefully removed in such a manner as to avoid potential damage to remaining trees and vegetation, the harboring of insects or promotion of disease, the harboring of rodents or undesirable wildlife, or increases in fire hazards.
- (G) *Pruning standards.* Trees intended for shade purposes shall be allowed to reach mature canopy. Acts, which effectively destroy a tree exclusive of invasive trees, are a violation of this article.
- (H) *Champion tree standards.* Notwithstanding any other provisions of this article, champion or co-champion trees, as recognized by the Florida Department of Agriculture's Division of Forestry, shall not be removed except for extraordinary circumstances and hardships. Removal of any champion or co-champion or specimen tree shall require Town Council approval.
- (I) *External agency standards.* The applicant is responsible for obtaining all required permits and authorizations from external agencies having jurisdiction for the proposed work; including, but not limited to:
- (1)

Prior to applying for a permit from the Town, the applicant must obtain all required permits and authorizations from external agencies having jurisdiction for the proposed work.

- (2) The property owner is subject to and must ensure compliance to the water quality rules and standards as set forth in Chapter 62.302, of the Florida Administrative Code (F.A.C.). When applicable, the property owner shall obtain any required environmental resource permit from the South Florida Water Management District or the Florida Department of Environmental Protection.

(Code No. 2010-008, § 2010-1A, § 51-10.5-2010)

Section 87-030. - Tree mitigation.

- (A) *Mitigation.* Mitigation, through tree replacement as specified under this section, shall be required for the removal of native trees that are three inch DBH or greater. A tree replacement table identifying and quantifying all replacement trees to be installed shall be submitted with the permit application. The tree replacement plan shall also identify the size of each replacement tree and location for installation. The tree replacement plans shall maximize tree and vegetative buffering between properties. Tree replacement can be done by the landowner.
- (B) *Tree replacement.* Removed native trees shall be mitigated through replacement in accordance with Table A-2: Tree Replacement, shown below. For relocated trees which die within one year of relocation, the replacement value shall be that as shown in Table A-2. Those trees less than six inches DBH shall be replaced with the same size tree as the relocated tree.

Table A-2: Tree Replacement	
Tree Height and DBH	# of Replacement Trees Required
30 ft. up or 9" DBH	6
Less than 30 ft. or 9" DBH	4
Less than 5 ft. or 3" DBH	0

- (1) Replacement trees greater than 30 feet tall in Table A-2 shall be at least ten feet in height and two and one-half inches DBH. Replacement trees less than 30 [feet] tall shall be at least ten inches in height and one and one-half inches DBH. Palm replacement trees shall have an overall height of no less than ten feet and approved for Zone 10a.
- (2) Tree mitigation may be addressed by the use of Florida Friendly Landscaping and/or the introduction of wetlands and upland pines areas and may include mid size and smaller trees.
- (3) All replacement trees shall consist of native vegetation indigenous to the area, and have an appropriately sized root ball and be free of disease, defects or damage that will prohibit the tree from attaining its natural growth habit. Pine trees that are selected as replacement trees shall be South Florida Slash Pine trees only. Five-gallon container native trees may be used for mitigation.
- (4) If the required replacement trees cannot be purchased within 60 miles of the parcel, an alternate replacement may be approved by the Town.
- (5) At least 25 percent of the trees planted as mitigation shall be the same species as the trees removed.
- (6) All replacement plants specified in the general permit are required to be accepted prior to the release of the Certificate of Occupancy, unless otherwise approved by the Town.
- (7) Monitoring time frames for all replacement plants specified in the general permit shall be established as permit conditions.
- (8) Mitigation vegetation, other than trees, may be approved by the Town providing the vegetation is native and indigenous to the area.
- (9) For parcels that have a conservation easement requirement from the SFWMD, where the dedication of upland buffers around a wetland is included as wetland mitigation, any trees installed within the dedication upland buffer may apply to the tree replacements required in Table A-2.
- (10)

All replacement trees must survive at least within one year of planting and must be replaced as often as necessary for the replacement to live beyond one year.

- (11) Specimen or champion trees are not subject to cutting, relocation or mitigation without approval of the Town Council.
- (C) *Mitigation waivers.* Mitigation requirements may be waived for residential single family properties for the clearing area of the house pad and attached structures, the septic system, driveway and a 50 foot buffer area around the house. This shall be determined by the Town on a case-by-case basis, after determination that the parcel owner is providing a building location that minimizes impacts to native vegetation to maximum extent practicable.
- (D) *Mitigation deferrals.* The Town shall provide for a parcel to be cleared for bona fide agriculture use consistent with state requirements without concurrent mitigation. The cost to comply with the requirement to quantify the complete tree mitigation specification or a tree survey may be a deterrent to bona fide agriculture in some cases. The Town may shall require that the parcel owner record a restrictive covenant on a Town approved form limiting the parcel to bona fide agriculture use, and requiring the parcel owner to make a cash donation to the Loxahatchee Groves Tree Mitigation Trust Fund, or to mitigate in accordance with Table A-2 at the time of a zoning or land use change. The restrictive covenant shall include language quantifying the complete tree mitigation specifications required at the time of conversion. Any restrictions presently in place by county or state must be included.
- (E) *Alternative mitigation.* Alternative mitigation proposals that meet the purpose and intent of this article may also be submitted and will be reviewed on a case-by-case basis. Alternative mitigation proposals require approval by the Town Council prior to issuance of a general permit. Any alternative mitigation which is proposed must remain within the Town.
- (F) *Mitigation for violations.* When native trees that are three inches DBH or greater are removed or are damaged without a permit, or when trees that were to be preserved in place are damaged or destroyed by activities conducted with a permit, those native trees shall be replaced at double the rate shown in the Table A-2 and may be subject to additional fines at the discretion of the Town Council.

(Ord. No. 2010-008, § 2(Exh. A, § 6), 10-5-2010)

Section 87-035. - Appeals.

- (A) *Appeal.* An applicant for any permit may appeal a final determination made by the Town's permitting authority to the Town Council.
- (B) *Submittal.* A written request for an appeal and the filing fee must be submitted within 45 calendar days of the applicant's receipt of the decision by the Town's permitting authority. The appeal must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely. Failure to file within such time frame shall constitute a waiver of a person's right of review by the Town Council.
- (C) *Hearing.* The appeal shall be reviewed at a hearing by the Town Council no later than 60 calendar days following the Town's receipt of a request and the required filing fee. The hearing shall be quasi-judicial and shall be conducted pursuant to the procedures set forth within the Town's Unified Land Development Code.
- (D) *Judicial relief.* An applicant may appeal a final written order of the Town Council to the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, as provided by law.

(Ord. No. 2010-008, § 2(Exh. A, § 7), 10-5-2010)

Section 87-040. - Violations.

- (A) *Violations.* A violation shall be the failure to comply with the requirements of this article or with a condition of a permit issued by the Town pursuant to this article. Each condition or requirement violated and each occurrence of a violation shall constitute as a separate violation.
- (B) *Enforcement.* The Town shall enforce the provisions of this article by any lawful means including, but not limited to, issuing a civil citation, bringing charges before the Town Special Magistrate, and seeking injunctive and equitable relief. To enforce compliance with this article, the Town may issue a cease and

desist order or require that a building permit or Certificate of Occupancy be withheld. A violation of this article shall be punishable by one or more of the following:

- (1) Up to quadruple permit fees for violations involving activities conducted without a valid permit that may otherwise have been permitted;
 - (2) Up to quadruple permit modification fees for activities conducted with a valid permit that are inconsistent with the stated permit conditions and result in a need to modify the existing permit;
 - (3) Any applicable remedies under F.S. chs. 166 and 162, as may be amended from time to time, including without limitation daily fines of up to \$250.00 per day for an initial violation and \$500.00 per day for repeat violators;
 - (4) A fine of up to \$5,000.00 per tree when a tree is effectively destroyed, and up to \$10,000.00 per tree for champion trees that are effectively destroyed;
 - (5) Remedial actions to restore the property to pre-violation conditions;
 - (6) The Town may take any other appropriate legal action including, but not limited to, administration action and the issuance of temporary and permanent injunctions to enforce the provisions of this article;
 - (7) Costs of enforcement; and
 - (8) On-site mitigation pursuant to this article.
- (C) *Violation fees.* Violation fees may be required as established by Resolution of the Town Council. All monies collected as civil penalties for violations of this article shall be paid to the Town of Loxahatchee Groves for the Loxahatchee Groves Tree Mitigation Trust Fund.

(Ord. No. 2010-008, § 2(Exh. A, § 8), 10-5-2010)

FOOTNOTE(S):

--- (1) ---

Editor's note— Ord. No. 2010-008, § 2(Exh. A, §§ 1—8), adopted Oct. 5, 2010, added provisions that were not specifically amendatory. At the editor's discretion, said provisions were included herein as §§ 87-005—87-040. [\(Back\)](#)

Cross reference— Landscaping, § 85-005 et seq. [\(Back\)](#)



Item 4. Discussion of Agricultural Issues

Excerpt from ULDC Review Committee Minutes of 7-18-13, regarding Item 4, under Old Business – Discussion of Vermiculture and Other Agricultural Issues

Committee Member Voren submitted a document regarding the Town adopted development regulations, with information from the Florida Statutes, and with three questions he suggested should be asked of the Attorney General:

The regulations in the ULDC are enacted as allowed by Florida Statutes Chapter 163. According to Florida Statutes Chapter 163, agriculture is exempt from development codes. Florida Statute §604.50 exempts non-residential farm buildings from all codes and fees.

1. For these exemptions to apply to farms, must the property appraiser classify the lands with a particular use code?
2. To be afforded nuisance protection under the Right to Farm Act Statute §823.14, does the property appraiser need to classify a particular use code and does one need to have to implement BMPs?
3. Can all plants and the entire animal kingdom, inclusive of insects, fish, reptiles, birds, and all animals useful to humans, regardless of whether they are used for food or adornment, be considered farm products or is there a limited list?

Motion: Committee Member Voren made a motion that anything that has to do with agriculture needs to be removed from the ULDC (all references removed). Seconded by Committee Member Hyslop.

Chair Standish requested that the motion is tabled until the next ULDC Review Committee, so that Committee members can take time to review the Florida Statutes. The questions for the AGO can be included in the next ULDC Review Committee meeting agenda, and brought back for discussion at the next meeting.

Town Planning Consultant Fleischmann suggested that what we should do is go through the Code and if there is a particular issue that relates to a Florida Statute, we should reference that Statute and the specific section of that Statute that would apply to any pertinent Code regulation.

Chair Standish requested that the Committee members email any question or comments that they may have on this issue to Town Manager Kutney, and further discussion could take place at the next meeting