

Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION and UNIVERSITY OF FLORIDA

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A Florida-Friendly Landscape Publication

Excessive nutrient loading to Florida's surface and ground waters is one of the biggest water quality issues facing our state. It is far easier and much less expensive to minimize the amount of nutrients that get into our waters than it is to treat stormwater and other nonpoint sources of pollution to remove nutrients. A major source of nutrient loading is from fertilizers applied to urban landscaping. To minimize the impacts of such fertilizers, the State of Florida has undertaken several initiatives to promote Florida-Friendly Landscaping and fertilizers.

This book is a compilation of two guidelines for model ordinances to promote Florida-Friendly Landscape principles in local government Land Development Regulations and model restrictive covenants for developments that require Florida-Friendly Landscaping. The first model ordinance guideline is a revision of a 2003 FDEP-led effort to create model ordinance language for use by communities in Florida. It represents FDEP's preference for addressing nonpoint sources of pollution from lawns and landscapes in a comprehensive manner with a strong focus on source controls and education; that is, to prevent stormwater from being polluted in the first place, or to treat it on the site where it is first generated, using low-impact development principles and Best Management Practices.

The second model ordinance is a stand-alone subset of the fertilization sections of the first ordinance. It is a much more limited, addressing only the application of lawn and landscape fertilization, which only addresses one component of the issues associated with fertilization of urban landscapes. This model has been adapted from a draft model ordinance written by the legislatively appointed Consumer Fertilizer Task Force in 2007. The main focus is on the training and professionalism of professional applicators.

Finally, the last section of the booklet addresses the private contract provisions typically found in deed restrictions, subdivision covenants, and other restrictions used by developers and homeowners associations. This document was produced by the University of Florida Levin College of Law.

Table of Contents

TABLE OF CONTENTS	iii	MODEL ORDINANCE FOR FLORIDA-FRIENDLY FERTILIZER USE ON URBAN LANDSCAPES	21
FLORIDA-FRIENDLY LANDSCAPE GUIDELINES FOR MODEL ORDINANCE LANGUAGE FOR PROTECTION OF WATER QUALITY AND QUANTITY	1	FLORIDA-FRIENDLY LANDSCAPING COVENANTS, CONDITIONS AND RESTRICTIONS	27

FLORIDA-FRIENDLY LANDSCAPE
GUIDELINES FOR MODEL ORDINANCE LANGUAGE
FOR PROTECTION OF WATER QUALITY AND QUANTITY
January 2009

This document is educational in nature and not meant to be adopted without full and public discussion of its provisions. It was developed by a partnership of industries, agencies, local and regional representatives, and other organizations to provide a sound model for the implementation of local control of water use and nonpoint source pollution issues associated with urban landscapes.

As of the date of publication, the implementation of this language is not mandated by any state or federal law. Communities have been encouraged, however, by Sections 125.568, 166.048, 373.185, 373.228, 373.4595, and 403.067 Florida Statutes, to consider adopting Florida-Friendly ordinances. In addition, the growing number of nutrient- impaired water bodies and the costs of treating nonpoint sources of pollution provide another incentive to adopt these ordinances. This document is an educational tool for those communities seeking advice on preparing this type of ordinance. It also addresses issues of nonpoint source pollution not addressed by many water conservation ordinances. Other model ordinances exist and should be consulted, and a full evaluation of how various provisions might mesh with existing codes is necessary. Most communities will find some features apply to land development codes, others under occupational licensing, nuisance ordinances, etc. It is not nor does it purport to be a comprehensive landscape ordinance.

The following organizations, and individuals too numerous to mention, were involved in the original creation of this product, first issued in September, 2003.

Florida Nursery, Growers and Landscapers Association	Florida Chapter, American Society of Landscape Architects
1000 Friends of Florida	FDOT
Green Industry Alliance	FDCA
Florida Turfgrass Association	FDACS
Florida Irrigation Society	FDEP
Landscape Maintenance Association	UF-IFAS
Florida Pest Management Association	Northwest Florida WMD
Certified Pest Control Operators	Suwannee River WMD
Florida League of Cities	St. Johns River WMD
Florida Association of Counties	Southwest Florida WMD
	South Florida WMD

Florida-Friendly Landscape Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity

JANUARY 2009

1. TITLE

AN ORDINANCE OF THE (CITY/COUNTY OF) AMENDING OR REPLACING ORDINANCE NO.(S) _ _ OF THE GENERAL LANDSCAPE REGULATIONS BY REQUIRING FLORIDA-FRIENDLY LANDSCAPE PRACTICES AND IRRIGATION SYSTEMS; BY PROVIDING FOR CONSISTENCY WITH STATE LAW AND THE (CITY/COUNTY OF) COMPREHENSIVE PLAN; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR AMENDMENT OF EXISTING REGULATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR ENFORCEMENT AND PROVIDING AN EFFECTIVE DATE.

2. FINDINGS OF FACT

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, (F.S.), provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, pursuant to Sections 125.568, 166.048, 373.185, F.S. and 373.228, local governments should consider the adoption of Florida-Friendly Landscape Standards and further Section 376.62, F.S., regulates the installation of rain sensor devices on automatic lawn sprinkler systems; and

WHEREAS, Section 373.228 F.S. requires that ordinances or rules addressing landscaping or irrigation shall follow the standards in *Landscape Irrigation and Florida-Friendly Design Standards*, December 2006; and

WHEREAS, the Florida Watershed Restoration Act (403.067 F.S.) and the NPDES municipal stormwater permitting program require local governments to reduce pollutant loads discharged from their stormwater management systems to better protect and restore surface and ground waters; and

WHEREAS, the (City/County of ___) recognizes the need for the protection of water as a natural resource through the application of Florida-Friendly Landscape practices; and

WHEREAS, a Florida-Friendly Landscape promotes the conservation of water by the use of site adapted plants and efficient watering methods which generally

results in a long-term reduction of irrigation, fertilizer, and pesticide requirements, costs, energy, and maintenance; and

WHEREAS, a Florida-Friendly Landscape encourages a reduction of total energy expenditures such as water pumping and treatment, manufacture and shipping of fertilizers, insecticide, and other gardening chemicals, operation and maintenance of mowers, edgers, blowers and other combustion based yard equipment, as well as labor; and

WHEREAS, community-wide Florida-Friendly Landscape efforts are designed to save significant amounts of water to preserve local water supplies such that cumulative benefits may reduce or postpone the need for community potable water supply expansion; and

WHEREAS, The Florida Legislature enacted Florida Statutes, Chapter 481, Part II and the Board of Landscape Architecture adopted Rule 61-G-10 Florida Administrative Code, which defines and regulates the practice of landscape architecture to protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE (CITY/COUNTY OF _____), FLORIDA, as follows:

3. SHORT TITLE

This ordinance shall be known and may be referred to as the (City/County of _____) Ordinance for Protection of Water Quality and Quantity Using Florida-Friendly Landscapes.

4. AUTHORITY

This ordinance is adopted by the (City/County of ___) under its home rule powers, its police powers to protect the public health, safety, and welfare, and under powers pursuant to the authority granted by Sections 125.568 (Counties) and 166.048 (Cities), Florida Statutes, in order to implement and enforce the standards, rules and regulations as set forth herein.

5. ADMINISTRATIVE STANDARDS

Whenever, in the course of administration and enforcement of this ordinance, it is necessary and desirable to make any administrative decision, then,

unless other standards are in this Ordinance, the decision shall be made so that the result will not be contrary to the spirit and purpose of this ordinance or injurious to the surrounding neighborhood or the community at large.

6. PURPOSE AND INTENT

The purpose of these regulations is to establish minimum standards for the development, installation, and maintenance of Florida-Friendly Landscape areas without inhibiting creative landscape design, construction and management

Specific Best Management Practices (BMPs) have been developed that include water conservation measures, the preservation of natural vegetation where applicable, and appropriate plant selection and location. Best Management Practices have also been developed for the use of fertilizers, pesticides and appropriate maintenance practices such as proper pruning techniques, mowing, mulching and composting. Implementation of BMPs will aid in improving environmental quality and the aesthetic appearance of public, commercial, industrial, and residential areas.

These guidelines and landscape practices are established to help communities, developers, builders, contractors, businesses and homeowners be partners in improving and protecting Florida's environment.

These practices are also based on the premise that the quality of Florida's surface and ground water is affected by stormwater runoff and leachate. Improper landscape design, construction and management may contribute to nonpoint source pollution that affects ground and surface water quality. Use of BMPs in proper landscape design and maintenance can reduce pollution and save water, as well as save labor, resources, and money. Application of BMPs will also help to enhance property values, improve Florida's quality of life and protect natural resources for Florida residents well into the future.

This ordinance is based on concepts of Florida-Friendly Landscaping and the use of BMPs. The Florida-Friendly Landscape concept is based on the principles of the *Florida Yards and Neighborhoods (FYN) and Environmental Landscape Management (ELM)* programs operated by the University of Florida Cooperative Extension Service, along with the various water conservation programs of the State's Water Management Districts, and BMPs identified in the *Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries* (2008).

The *Florida Yards & Neighborhoods Handbook*, the Water Management Districts' *Waterwise Florida Landscape Guide*, *Xeric Landscaping with Florida Native Plants* by the Association of Florida Native Nurseries, FDEP's *Waterfront Property Owners Guide*, the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*, and *Water Right: Conserving our Water, Preserving our Environment* published by the International Turf Producers Foundation should be referred to before making landscape and other site decisions. In general, all landscapes shall be designed to minimize adverse effects on Florida's natural systems.

No part of these guidelines shall be interpreted to restrict creative designs or the inclusion of landscape elements such as vegetable gardens, fruit trees, arbors, water gardens, or furnishings.

This ordinance incorporates several accepted principles of a Florida-Friendly Landscape. These principles, listed below, are included within the general provisions section for the purpose of giving guidance and direction for the administration and enforcement of the regulations contained herein. Detailed explanations of the following principles are included in the previously cited documents.

- Site Planning and Design
- Soils
- Land Clearing Standards and Preservation of Native Vegetation
- Appropriate Plant Selection, Location, and Arrangement
- Practical Use of Turf
- Efficient Irrigation
- Yard Waste Management, Composting and Use of Mulches
- Fertilizer Management
- Pesticide Management
- Landscape Maintenance
- Shoreline Considerations

This Ordinance regulates the proper use of fertilizers by any applicator and establishes training and licensing requirements for Commercial and Institutional Fertilizer Applicators. It also establishes a prohibited application period when fertilizer can not be applied

and specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Ordinance requires the use of Best Management Practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on (MUNICIPALITY / COUNTY)'s natural and constructed stormwater and drainage conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. *[Guidance: as appropriate]* Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of (MUNICIPALITY / COUNTY) residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater and drainage conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

[Guidance: Florida Statutes 125.568(3), 166.048(3), and 373.185(3) provide that a deed restriction or covenant entered after October 1, 2001, or local government ordinance, may not prohibit any property owner from implementing Xeriscape or Florida-Friendly Landscape practices on his or her land. Any restrictions created after this date are void.]

7. **APPLICABILITY**

The provisions of this ordinance shall apply to the development, redevelopment, rehabilitation, and maintenance of all property within present or future incorporated areas of the (City/County of _____) which are subject to the provisions of Chapter _____, Site Plan Review; Chapter _____, Planned Unit Developments; or Chapter _____, Subdivisions and Plats of the (City/County of _____), Land Development Code. *[Guidance: If adopted by a county, unincorporated areas should also be included where they are subject to development.]*

No permit shall be issued for building, paving, or tree removal unless the landscape construction documents comply with the provisions hereof; and no Certificate of Occupancy shall be issued until the requirements herein are met. *[Guidance: Provided that such documents are required to be submitted.]*

All City/County facilities will be managed in accordance with these practices within one year of the approval of this Regulation. All City/County landscape service contractors will adhere to these practices. All new bid specifications and contracts will

reflect this requirement beginning one year after the approval of this regulation. *[Guidance: Existing facilities/sites may not have been designed to maximize Florida-friendly practices, but should be managed insofar as is practicable using these principles.]*

All new and renovated City/County facility landscapes will be designed in accordance with these principles and be constructed and installed using Florida-Friendly Landscape materials.

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of (MUNICIPALITY / COUNTY), unless such applicator is specifically exempted by the terms of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts. *[Guidance: Local government may adopt additional or more stringent provisions to the model ordinance, but to avoid allegations of restraint of trade or arbitrary and capricious actions, should clearly document that the provisions are reasonable and necessary, as determined by scientific study, to comply with state or federal environmental rules or to prevent future violations, and to deviate as little as possible from standard provisions promulgated by this Model Ordinance, so as to avoid a confused regulatory tangle of adjoining jurisdictions which unduly favors local service only businesses over those with a multijurisdictional service area.]*

If the provisions of this ordinance conflict with other ordinances or regulations, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.

Specific application of the provisions shall include, but not be limited to:

- All new, redeveloped, or rehabilitated landscapes for public agency projects and private development projects including but not limited to industrial, commercial, residential, and recreation projects, including new single-family and two-family homes; *[Guidance: Florida Statutes 125.568(3), 166.048(3), and 373.185(3) provided that a deed restriction or covenant entered after October 1, 2001, or local government ordinance, may not prohibit any property owner from implementing Xeriscape or Florida-Friendly Landscape practices on his or her land. Any restrictions created after this date are void.]*
- Developer-installed landscapes at entrances into and common areas of single-family and multi-family projects;

- Any development approved prior to the effective date of this ordinance if the governing site development plan is amended;

Exempted from the provisions of this ordinance are the following as applicable:

- Bona-fide agricultural activities as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes, provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.
- Other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock provided that fertilizers are applied in accordance with the appropriate Best Management Practices Manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.
- Any development that is governed by an approved, final site development plan or a valid building permit issued prior to the effective date of this ordinance is exempted from retrofitting or meeting the specific provisions of Sections 9 A-F. However, existing development is not exempted from those provisions affecting management, maintenance, or the education of maintenance personnel.
- Rights-of-way for public utilities, including electrical transmission and distribution lines, and natural gas pipelines.
- Conditional exemption may be granted by (to be inserted by local government) for individual projects if the applicant can demonstrate acceptable reasons for the requested exemption.

8. DEFINITIONS

For the purpose of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section unless the context clearly indicates otherwise.

All words used in the present tense include the future; all words in the singular number include the plural and the plural the singular; the word “building” includes the word “structure”; the word “shall” is mandatory and the word “person” includes a firm, corporation, county, municipal corporation, or natural person. The term “council” or “commission” shall

mean Council or Commission of the (City/County of _____), and the word “city” or “county” shall mean the (City/County of _____) of the State of Florida. The word “used” shall be deemed to include the words “arranged”, “designed”, or “intended to be used”, and the word “occupied” shall be deemed to include the words “arranged”, “designed”, or “intended to be occupied”. Any word or term not interpreted or defined by this section shall be used with a common dictionary meaning of common or standard utilization.

1. “**Administrator**” means the (MUNICIPALITY / COUNTY) Administrator, or an administrative official of (MUNICIPALITY / COUNTY) government designated by the City/County Administrator to administer and enforce the provisions of this Article.
2. “**Application**” or “**Apply**” means the actual physical deposit of Fertilizer to Turf or Landscape Plants.
3. “**Applicator**” means any Person who applies Fertilizer on Turf and/or Landscape Plants in (MUNICIPALITY / COUNTY).
4. **Aquascape**. The planting of aquatic and wetland plants in the enhancement, restoration, or creation of freshwater, estuarine, or marine systems.
5. **Automatic Controller**. A mechanical or electronic device, capable of automated operation of valve stations to set the time, duration and frequency of a water application.
6. “**Board or Governing Board**” means the Board of City/County Commissioners of (MUNICIPALITY / COUNTY), Florida.
7. “**Best Management Practices**” means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.
8. “**Code Enforcement Officer, Official, or Inspector**” means any designated employee or agent of (MUNICIPALITY / COUNTY) whose duty it is to enforce codes and ordinances enacted by (MUNICIPALITY / COUNTY).
9. “**Commercial Fertilizer Applicator**” means any Person who applies Fertilizer on Turf and/or Landscape Plants in (MUNICIPALITY / COUNTY).

in exchange for money, goods, services or other valuable consideration.

10. **Constant Pressure/Flow Control.** A device that maintains a constant flow, or pressure, or both.
11. **Developed landscape area.** That portion of the property where pre-development vegetation is to be removed.
12. **Emitter.** This term primarily refers to devices used in microirrigation systems.
13. **“Fertilize,” “Fertilizing,” or “Fertilization”** means the act of applying Fertilizer to Turf, specialized Turf, or Landscape Plant.
14. **“Fertilizer”** means any substance or mixture of substances, except pesticide/fertilizer mixtures such as “weed and feed” products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.
[Guidance: Regulation of pest control businesses and applicators, and of pesticide use, is preempted to the Florida Department of Agriculture and Consumer Services (FDACS) by Chapters 482.242, and 487.051 (2), F.S. and suspected pesticide misuse should be reported to FDACS. Weed and feed products are registered pesticides. The Limited Commercial Landscape Maintenance Certification Program does not allow landscape maintenance workers to make any kind of pesticide applications (including weed control and/or weed and feed products) to any turf areas. Per 482.165(3) F.S., a civil penalty for unlicensed application of pesticides, including weed and feed products, may not be less than \$500 or more than \$5,000 for each offense.]
15. **Filter.** A device in irrigation distribution systems that separates sediment or other foreign matter.
16. **Florida-Friendly Landscape.** The principles of Florida-Friendly Landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components of Florida-Friendly Landscape include planning and design, soil analysis, the use of solid waste compost, practical use of turf, and proper maintenance.
17. **Ground Cover.** Low growing plants, other than turfgrass, used to cover the soil and form a continuous, low mass of foliage.

18. **“Guaranteed Analysis”** means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.
19. **Hardscape.** Areas such as patios, decks, driveways, paths and sidewalks that do not require irrigation.
20. **High Water Use Plants.** Plants that require irrigation to provide supplemental water on a regular basis throughout the year, or are so identified by a regulatory agency having jurisdiction. When placed in a naturally high water table area appropriate to the plant such that irrigation is not required, such plants shall not be considered high water use for the purposes of this ordinance.
21. **Hydrozone.** A distinct grouping of plants with similar water needs and climatic requirements.
22. **Infiltration Rate.** The rate of water entry into the soil expressed as a depth of water per unit of time (inches per hour)
23. **“Institutional Applicator”** means any Person, other than a non-commercial or commercial Applicator (unless such definitions also apply under the circumstances), that applies Fertilizer for the purpose of maintaining Turf and/or Landscape Plants. Institutional Applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.
24. **Irrigated landscape area.** All outdoor areas that require a permanent irrigation system.
25. **Irrigation System.** A constructed watering system designed to transport and distribute water to plants.
26. **Irrigation Zone.** A grouping of sprinkler heads or microirrigation emitters operated simultaneously by the control of one valve.
27. **Landscape.** Any combination of living plants (such as grass, ground cover, shrubs, vines, hedges, or trees) and non-living landscape material (such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials).
28. **Landscape Construction Documents.** Landscape construction documents may include a planting plan, a landscape layout plan, an irrigation plan, a grading and drainage plan, detail sheets and

written specifications. Plans shall be numbered, dated, North arrow indicated, scaled, and sealed by an appropriately licensed professional where required by Florida Statutes Chapter 481, Part II.

29. **Landscape Design.** Means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for placement of tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.
30. **Landscape Layout Plan.** Plans and drawings showing the location of buildings, structures, pedestrian, transportation, or environmental systems, and the detail for placement of site amenities, accessibility components, plantings and other tangible objects. Plans shall be numbered, dated, North arrow indicated, scaled, and sealed by an appropriately licensed professional where required by Florida Statutes Chapter 481, Part II.
31. **“Landscape Plant”** means any native or exotic tree, shrub, or groundcover (excluding Turf).
32. **Landscaped Area.** The entire parcel; less the building footprint, driveways, hardscapes such as decks and patios, and non-porous areas. Water features are included in the calculation of the landscaped area. This landscaped area includes Xeriscape™ as defined in Chapter 373.185(1)(b), F.S.
33. **Low-flow Point Applicators.** Irrigation applicators with output less than 60 gallons per hour (gph).
34. **“Low Maintenance Zone”** means an area a minimum of six (6) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.
35. **Low Water Use Plants.** Plants that do not need supplemental water beyond natural rainfall, or are so identified by a regulatory agency having jurisdiction.
36. **Microclimate.** The climate of a specific area in the landscape that has substantially differing sun exposure, temperature, or wind, than surrounding areas or the area as a whole.
37. **Microirrigation (low volume).** The application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes (laterals). Microirrigation encompasses a number of methods or concepts including drip, subsurface, bubbler, and spray irrigation, previously referred to as trickle irrigation, low volume, or low flow irrigation.
38. **Moderate Water Use Plants.** Plants that need supplemental water during seasonal dry periods.
39. **Moisture Sensing Device or Soil Moisture Sensor.** A device to indicate soil moisture in the root zone for the purpose of controlling an irrigation system based on the actual needs of the plant.
40. **Mulch.** Non-living, organic or synthetic materials customarily used in landscape design to retard erosion and retain moisture.
41. **“(MUNICIPALITY / COUNTY) Approved Best Management Practices Training Program”** means a training program approved by the (MUNICIPALITY / COUNTY) Administrator that includes at a minimum, the most current version of the Florida Department of Environmental Protection’s *“Florida-Friendly Best Management Practices for Protection of Water Resources by the Florida Green Industries, December 2008”* as revised and any more stringent requirements set forth in this Article. *[Guidance: Adopting entity must define levels of training for this program. Some may wish a certificate of completion, implying passing a test, others only attendance at the training, such as for laborers that may be illiterate and do not handle fertilizers or other agrichemicals.]*
42. **Native Vegetation.** Any plant species with a geographic distribution indigenous to all, or part, of the State of Florida as identified in: Wunderlin, R. P. 1998. Guide to the Vascular Plants of Florida. University Press of Florida, Gainesville.
43. **“Pasture”** means land used for livestock grazing that is managed to provide feed value.
44. **“Person”** means any natural Person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.
45. **Pervious Paving Materials.** A porous asphaltic, concrete or other surface and a high-void aggregate.

gate base which allows for rapid infiltration and temporary storage of rain on, or runoff delivered to, paved surfaces.

46. **Plant Bed.** A grouping of trees, shrubs, ground covers, perennials or annuals growing together in a defined area devoid of turfgrass, normally using mulch around the plants.
47. **Plant Communities.** An association of native plants that are dominated by one or more prominent species, or a characteristic physical attribute.
48. **Planting Plan.** Specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials.
49. **Point of Connection (POC).** The location where an irrigation system is connected to a water supply.
50. **Pop-up Sprays.** Spray heads that pop up with water pressure and provide a continuous spray pattern throughout a given arc of operation.
51. **Pressure Tank.** A pressurized holding tank for irrigation water coming from wells to minimize cycling of the water pump.
52. **“Prohibited Application Period”** means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of (CITY/COUNTY), issued by the National Weather Service, or if heavy rain¹ is likely.
53. **Pump Cycling.** Irrigation pump coming on and shutting off frequently during operation of irrigation systems.
54. **Rain Sensor Device.** A low voltage electrical or mechanical component placed in the circuitry of an automatic irrigation system that is designed to turn off a sprinkler controller when precipitation has reached a pre-set quantity. Required by law (373.62 F.S.) on all automatic irrigation systems since 1991.
55. **Runoff.** The water that results from and occurs following a rain event, or following an irrigation event, because the water is not absorbed by the soil or landscape and flows from the area.
56. **Site Appropriate Plant.** A plant that after establishment, will thrive within the environmental conditions that are normal for a specific location without artificial supplements such as irrigation.
57. **“Slow Release,” “Controlled Release,” “Timed Release,” “Slowly Available,” or “Water Insoluble Nitrogen”** means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.
58. **“Sod,” or “Lawn”** means a piece of turf-covered soil held together by the roots of the turf.
59. **Soil Moisture Sensor.** See Moisture Sensing Device.
60. **Soil Texture.** The classification of soil based on the percentage of sand, silt, and clay in the soil.
61. **Turf and/or Turfgrass.** A mat layer of monocotyledonous plants such as, but not limited to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, and Zoysia.
62. **Valve.** A device used to control the flow of water in the irrigation system.
63. **Water Use Zone.** See “Hydrozone”.

9. GENERAL PROVISIONS AND DESIGN STANDARDS

In 2004, the Florida legislature created section 373.228 Florida Statutes directing the Department of Environmental Protection, the Water Management Districts, and several stakeholder groups to devise standards for Landscape Irrigation and Florida-Friendly Landscape design. The *Landscape Irrigation and Florida-Friendly Design Standards, December 2006*, were published by the Department of Environmental Protection. **Local governments must use these standards** when adopting local ordinances after that date.

Landscape and Xeriscape (Florida-Friendly) Design Standards:

1. Low impact site design practices, such as preserving existing native trees and vegetation, shall be used if feasible. Where established natural vegetation is incorporated into the landscape design, irrigation of those areas shall not be required.

¹ World Meteorological Organization definition of heavy rain: Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period. <http://severe.worldweather.org/rain/>, http://www.wrh.noaa.gov/sew/MediaGuide/TermsOutlooks_Watches_Warnings.pdf.

2. The plant palette and irrigation system shall be appropriate for site conditions, taking into account that, in some cases, soil improvement can enhance water use efficiency.
3. Plants shall be grouped together by irrigation demand.
4. The percentage of landscaped area in irrigated high water use hydrozones should be minimized. Local government ordinances shall address the percentage of irrigated landscaped area that may be included in high water use hydro-zones. These high water use limits should not apply to land-scaped areas requiring large amounts of turf for their primary functions, e.g., ballfields and playgrounds.

When the construction upon or the development of a new site or the redevelopment, reconstruction, upgrading, expansion or change in use of a previously developed site is such that site plan review by the (to be inserted by the Local Government) is required prior to the issuance of a building permit, the provisions of 9A-F of this ordinance shall be applied to newly disturbed areas of such site. *[Guidance: It is intended that for expansion or remodeling of existing sites, only new or modified areas would be subject to these provisions.]*

A. Site Planning and Design

1. Site designs and landscape construction documents shall be prepared in accordance with the requirements of all applicable Florida Statutes. All landscape and irrigation system designs shall be consistent with the standards required under 373.228 Florida Statutes.
2. Site Plans for new development shall include riparian buffers adjoining all waters of the state. Such buffers should be native, or if previously disturbed, constructed, to be at least 25 feet, and preferably 50-150 feet wide, to protect water bodies from nonpoint source pollution generated by up gradient development. Riparian buffers shall be designed and managed in accordance with USDA-NRCS conservation practices for riparian buffers and filter strips (codes 390, 391, and 393). Such riparian areas may be included in the gross development area for purposes of determining zoning density.
3. The site plan shall consider natural drainage features to minimize runoff. The use of pervious surfaces and areas is preferred, therefore impervious surfaces and materials within the landscaped area shall be limited to borders,

sidewalks, step stones, and other similar materials, and shall not exceed (To be inserted by the local government) % of the landscaped area. Use of pervious paving materials is strongly encouraged, and relative imperviousness will be considered.

[Guidance: Site planning and design can affect the management and maintenance of lawns and landscapes. Some communities may wish to have detailed landscape construction documents submitted to and reviewed by the local building department. Due to the variation in local government organization, staff, and existing codes, it is not possible to develop specific language in these guidelines. As guidance, the word “should” is used in several areas below where “shall” may be more appropriate in an actual ordinance; Specific choices need to be made by the local government involved. If such plan reviews are desired, the following topics should be considered.

- Site plans should identify all vegetated areas to be preserved.
- All invasive exotic plant species should be removed from each site prior to the beginning of construction. For purposes of determining plant species to remove, refer to Department of Agriculture and Consumer Services “Noxious Weeds” rule Chapter 5B- 57, F.A.C.
- Gravel, river rock, shell and similar materials should not be used as a major landscape ground cover or mulch. In no case may these materials occupy over (To be inserted by the local government) % of the landscape surface area as they increase the need for herbicide use, have no habitat value, reflect rather than absorb heat, and do not produce oxygen like plants.
- The solar orientation of the property and its relationship to other properties should be considered as this may produce different microclimate exposures (e.g., sun vs. shade, southern vs. northern exposure, surrounded by heat-reflective surfaces, etc).

If landscape construction documents are required, they should include, but not be limited to the following:

- Location of all underground and overhead utilities;
- Existing and proposed trees, shrubs, ground covers and turf areas within the developed landscape area;
- Plants by botanical and common name, and where applicable, cultivar name; spacing, and quantities of each type of plant by container size and by mature height and spread;

- Existing and proposed property lines, streets, street names and public utilities;
- Existing and proposed hardscape features such as driveway(s) and sidewalk(s) as necessary;
- Existing and proposed structures such as pool(s), fountain(s), fence(s) and retaining wall(s);
- Existing and proposed buildings;
- Indicate in a table the total square footage(s) of the various landscape hydrozones on the plan. If more than one water meter serves the site, the total hydrozone square footages of the various hydrozones must be identified with each Point of Connection (POC) and meter providing water service.

Irrigation plans must be designed to recognize differential irrigation requirements of the landscape as described in Section F. It is suggested that “Record” or “As-Built” construction documents be submitted prior to issuance of the Certificate of Occupancy, with a copy delivered to the homeowner. This will help to prevent later damage from digging by utility workers or the homeowner and assist the owner with understanding the system design. The irrigation plan should show the following:

- Irrigation point(s) of connection and design capacity;
- Water service pressure at irrigation POCs;
- Water meter size;
- Reduced-pressure-principle backflow-prevention devices for each irrigation POC on potable water systems;
- Major components of the irrigation system, including all pumps, filters, valves, and pipe sizes and lengths.
- Precipitation rate expressed in inches per hour for each valve circuit. The preparer must attach to the Project Data Sheet the calculations for deriving precipitation rates for each irrigation valve circuit;
- Total flow rate (flow velocity not to exceed 5 feet per second) in gallons per minute (gpm) and operating pressure (psi) for each individual overhead and bubbler circuit, and gallons per hour (gph) and operating pressure for low-flow point irrigation circuit;
- Irrigation legend will have the following elements: Separate symbols for all irrigation equipment with

different spray patterns and precipitation rates and pressure compensating devices; general description of equipment; manufacturer’s name and model number for all specified equipment; recommended operating pressure per nozzle and bubbler and low-flow emitter; manufacturer’s recommended overhead and bubbler irrigation nozzle rating in gallons per minute (gpm), or gallons per hour (gph) for low flow point applicators; minimum (no less than 75% of maximum spray radius) and maximum spray radius per nozzle; and manufacturer’s rated precipitation rate per nozzle at specified psi;

- Recycled-water piping and guidelines as required; Reclaimed or non-potable water should be used for irrigation if an acceptable source is determined to be available by the (City/County) Engineer.
- Identify location of rain shut-off devices or soil moisture sensors.
- The irrigation system must take any existing slopes over 10% into account.

If a grading plan is desired, it shall indicate all finish grades, spot elevations as necessary, drainage, and existing and new contours within the developed landscape area.]

B. Soils

1. Soils vary from site to site and even within a given site. Soil analysis information is needed for proper selection of plants and, if needed, soil amendments. A soil analysis based on random sampling is required and shall be performed by a reputable soil testing lab or University of Florida/IFAS Cooperative Extension facility.

[Guidance: If a landscape design is required, a soil analysis satisfying the following conditions shall be submitted:

- Determination of soil texture, indicating the percentage of organic matter.
 - Measurement of pH, and total soluble salts.
 - Estimated soil infiltration rate.]
2. Existing horticulturally suitable topsoil shall be stockpiled and re-spread during final site grading.
 3. Any new soil required shall be similar to the existing soil in pH, texture, permeability, and other characteristics, unless convincing evidence is provided that a different type of soil amendment approach is justified.

4. The use of solid waste compost as a soil amendment is encouraged where it is appropriate.

C. Standards for land clearing and preservation of native vegetation

1. This section shall apply to all development permitted upon approval of this regulation. Parcels or lots independent of larger developments that are less than X acres (to be determined by local govt.) in size shall not be subject to these set-aside requirements. Individual single-family lots are exempt from this requirement; however, single family and planned unit developments are not exempt. Tree preservation ordinances and all other landscape requirements shall remain applicable to all development as described in the tree preservation and landscape ordinances.
2. This ordinance mandates a total of X% percent of a site planned for development be set aside for preservation. When clearing, X% (to be determined by local govt.) of the native vegetation on the site shall be preserved. If vegetation is not present on site, established open space zoning and landscape ordinance criteria shall be followed.
3. Vegetation that is set aside for preservation shall be protected from all on-site construction. Protective barriers shall be installed along the perimeter of all preserve areas. Protective barriers shall be constructed at such intervals to prevent machinery from passing between them. No equipment or materials shall be permitted to be stored within the set-aside areas, and dumping of excess soil, liquids, or any other construction debris within the preservation areas is prohibited. Removal or re-grading of soils within preservation areas is prohibited. Any damaged vegetation within the set-aside areas shall be replaced with vegetation equivalent to the vegetation destroyed before any certificates of occupancy or other approvals may be issued
4. Areas that are considered to be of *high ecological importance* should be given highest priority for protection. These areas include, but are not limited to, areas that have occurrences of federal and state listed species of flora and fauna, areas of high biological diversity, and areas that are in aquifer recharge zones.
5. If more than one native terrestrial plant community is present on the site, areas representing all existing plant communities shall be preserved onsite unless preserving more of one particular community is more ecologically beneficial.

6. Utilities, stormwater easements and right-of-ways are exempt from provisions 1-5 above, but should avoid preserved areas. Although not specifically required, creative alternatives to common practice in these areas may be eligible for incentives.
7. High-quality areas placed in preservation shall be retained in entirety, in their current or improved natural state, and protected into perpetuity regardless of ownership. This requirement may be negotiated to create contiguous preservation among plant communities. The developer shall prove to the reviewer, through exhibits provided during the site approval process, that the highest ecologically valued land is being retained first in order to satisfy the set-aside requirement. If the preservation of the highest ecologically valued land produces undue burden on the development of the property, it is also the developer's responsibility to prove such hardship and provide an acceptable alternative for approval.
8. Areas set aside for preservation should be contiguous parcels of land that are inter-connected and considered viable habitat for wildlife to the extent practical. Small fragmented areas of preservation should be avoided when possible.
9. Rights-of-way and areas determined to be future rights-of-way in the comprehensive plan, and utility or drainage easements shall not be allowed as designated set-aside areas.

D. Appropriate Plant Selection, Location, and Arrangement

1. Plant selection should be based on the plant's adaptability to the existing conditions present at the landscaped area and native plant communities, particularly considering appropriate hardiness zone, soil type and moisture conditions, light, mature plant size, desired effect, color and texture. Plant species that are drought and freeze tolerant are preferred. For purposes of determining prohibited and controlled plant species refer to the Department of Agriculture and Consumer Services rule, Chapter 5B-57 Florida Administrative Code. Plants named in this rule may not be used except as allowed in Chapter 5B-57.
2. Plants shall be grouped in accordance with their respective water and maintenance needs. Plants with similar water and cultural (soil, climate, sun, and light) requirements shall be grouped together. The water use zones (hydrozones)

shall be shown on the irrigation, layout, and planting plans (where required). Where natural conditions are such that irrigation is not required, the presence of site appropriate plants shall not be considered a high water use hydrozone.

3. The combined size of all high water use hydro-zones shall be limited to X% (to be determined by local govt.) of the total landscaped area. In landscapes irrigated with recycled water, the allowable size of all high water-use zones shall be increased to not more than X% (To be determined by local government.) of the total landscaped area. These high water-use limits do not apply to landscaped areas requiring large amounts of turf for their primary functions, e.g., ballfields and playgrounds.

E. Turf Areas

1. The type and location of turf areas shall be selected in the same manner as with all the other plantings. Irrigated turf areas, as opposed to non-irrigated turf areas, are considered to be a high water use hydrozone. Irrigated turf shall not be treated as a fill-in material but rather as a planned element of the landscape. Turf shall be placed so that it can be irrigated using separate zones. While turf areas provide many practical benefits in a landscape, how and where it is used can result in a significant reduction in water use.
2. Irrigated turfgrass areas shall be consolidated and limited to those areas on the site that receive pedestrian traffic, provide for recreation use, provide cover for septic tank drainfields and required drainfield reserve areas, or provide soil erosion control such as on slopes or in swales; and where turfgrass is used as a design unifier, or other similar practical use. As a matter of public safety, no turfgrass that requires mowing shall be allowed on slopes greater than 4:1 or within 6 feet of the waters edge, except where adjacent to seawalls and bulkheads or needed to control erosion. Turf areas shall be identified on the landscape plan (where plan is required).
3. One of the most common reasons for turf failure is over-irrigation. Irrigation systems shall be designed and operated in accordance with section F.

F. Efficient Irrigation

[Guidance: In 2004, the Florida legislature created section 373.228 Florida Statutes directing the Department of Environmental Protection, the Water Management Districts, and several stakeholder groups to devise

standards for Landscape Irrigation and Florida-Friendly Landscape design. These standards were adopted in December 2006. Local governments must use these standards when adopting local ordinances after that date. The irrigation standards are based on Appendix F of the Florida Building code.]

1. All irrigation installations after the effective date of this ordinance shall meet the irrigation standards identified per 373.228 F.S. These include:
 - a. Irrigation systems shall be designed to meet the needs of the plants in the landscape (not the other way around).
 - b. When feasible, irrigation systems shall be designed to separately serve turf and non-turf areas.
 - c. The irrigation system plans and specifications shall identify the materials to be used and the construction methods.
 - d. The design shall consider soil, slope, and other site characteristics in order to minimize water waste, including overspray, the watering of impervious surfaces and other non-vegetated areas, and off-site runoff.
 - e. The system shall be designed to minimize free flow conditions in case of damage or other mechanical failure.
 - f. The system shall be designed to use the lowest quality water feasible.
 - g. Rain switches or other approved devices, such as soil moisture sensors, to prevent unnecessary irrigation, shall be incorporated. (Section 373.62, F.S.)
 - h. A recommended seasonal operating schedule and average precipitation rates for each irrigation zone for both establishment and maintenance conditions shall be provided.
 - i. Control systems shall provide the following minimum capabilities:
 - i. Ability to be programmed in minutes, by day of week, season and time of day,
 - ii. Ability to accommodate multiple start times and programs,
 - iii. Automatic shut off after adequate rainfall,

- iv. Ability to maintain time during power outages for a minimum of three days, and
- v. Operational flexibility to meet applicable year-round water conservation requirements and temporary water shortage restrictions.
- j. Recommended maintenance activities and schedules shall be included.
- k. Precipitation rates for sprinklers and all other emitters in the same zone shall be matched, except that microirrigation emitters may be specified to meet the requirements of individual plants.
- l. Irrigation systems shall be designed to maximize uniformity, considering factors such as:
 - i. Emitter types.
 - ii. Head spacing.
 - iii. Sprinkler pattern.
 - iv. Water pressure at the emitter.
- m. Irrigation systems with main lines larger than two inches or designed to supply more than seventy gallons per minute shall incorporate a means to measure irrigation water use, at a minimum of ninety-five percent accuracy across the flow range.
- n. Irrigation system plans and specifications shall require the system installer to conduct final testing and adjustments to achieve design specifications prior to completion of the system and acceptance by the owner or owner's representative.
- o. Irrigation system plans and specifications shall require that the installer provide property owners and users with the following post-construction documentation, including as-constructed drawings, recommended maintenance activities and schedules, operational schedule, design precipitation rates, instructions on adjusting the system to apply less water after the landscape is established, maintenance schedule, water source, water shut-off method, and the manufacturer's operational guide for their irrigation controller. To the extent feasible, similar information should be made available for subsequent property transfers.

[Guidance: Other irrigation construction or design not addressed in the standards should be per the BMPs].

- 2. To assist the end user to operate the system properly, in addition to the minimum requirements of 373.228 F.S., the following shall be provided to the owner at the time of installation. The map shall be attached inside each irrigation controller or be kept in another readily available location if it is not practical to insert it in a small controller.
 - a. Irrigation scheduling information, with instructions for seasonal timer and sensor changes,
 - b. An irrigation valve site map detailing
 - i. valve locations,
 - ii. gallons per minute demands,
 - iii. precipitation rates,
 - iv. plant types within valve circuits, and
 - v. operating pressure requirements for each valve
- 3. The irrigation system shall be designed to correlate to the organization of plants into zones as described in (C) above. The water use zones shall be shown on the Irrigation Plan (where plan is required). All plants (including turf) require watering during establishment. Temporary facilities may be installed to facilitate establishment. Irrigation must be conducted in accordance with WMD restrictions.
- 4. Rain shut-off switch equipment shall be required on automatic irrigation systems to avoid irrigation during periods of sufficient soil moisture, in accordance with Florida Law (373.62 F.S.). Said equipment shall consist of an automatic mechanical or electronic sensing device or switch that will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

[Guidance: As of 2008, Water Management Districts, or others, may require conventional rain sensor switches even on soil moisture sensing systems, although this may change in the future as the long-term reliability of such systems is better documented.]
- 5. The installation of tracer wire along main lines and laterals is strongly encouraged to permit easy location and prevent inadvertent cutting of pipes.

6. If the water supply for the irrigation system is from a well, a constant pressure flow control device or pressure tank with adequate capacity shall be required to minimize pump “cycling”.
7. Check valves must be installed at irrigation heads as needed to prevent low head drainage and puddling.
8. Nozzle precipitation rates for all heads within each valve circuit must be matched to within 20% of one another.
9. No water spray from irrigation systems shall be applied under roof overhangs.
10. Irrigated areas shall not be less than 4 feet wide, except when next to contiguous property or using micro or drip irrigation.
11. A pressure-regulating valve shall be installed and maintained if static service pressure exceeds 80 pounds per square inch. The pressure-regulating valve shall be located between the meter and the first point of water use, or first point of division in the pipe, and set at not more than 50 pounds per square inch when measured at the most elevated fixture in the structure served. This requirement may be waived if satisfactory evidence is provided that high pressure is necessary in the design and that no water will be wasted as a result of high-pressure operation. *[Guidance: The purpose of this requirement is twofold, to protect against system failure during pressure surges, and to avoid wasted water due to operation of the system significantly above commonly used design values.]*

G. Yard Waste Management, Composting and Use of Mulches

1. Yard wastes shall not be disposed of or stored by shorelines, in ditches or swales, or near storm drains. *[Guidance: Yard wastes release nutrients as they decompose which may pollute the receiving water. Improper disposal of yard wastes can also contribute to flooding by causing stormwater runoff to backup in drainage systems. In addition, improper disposal may lead to spreading of invasive plants to new areas.]*
2. Shredded yard clippings and leaves should be used for mulch or be composted for use as fertilizer. However, diseased material should not be mulched and should be properly disposed of to avoid spreading disease.
3. Composting of yard wastes provides many benefits and is strongly encouraged. The resulting

materials are excellent soil amendments and conditioners. Other recycled solid waste products are also available and should be used when appropriate. *[Guidance: Most Florida communities have these programs at their landfill. Incentives may be created to encourage their use, such as a tonnage credit for dumping based on use of composted material.]*

4. Grass clippings are a benefit to lawns, replacing nutrients drawn from the soil and as mulch that helps retain moisture, lessening the need to irrigate. Grass clippings should be left on your lawn. Mulching mowers are recommended, because the grass clippings are chopped very finely by special blade and shroud configurations. If a conventional mower equipped with a side discharge chute is used, the following practices should be employed. When mowing near the shoreline, direct the chute away from the water body. When mowing upland areas, direct the chute back onto the yard, not onto the road or driveway.
5. Mulches applied and maintained at appropriate depths in planting beds assist soils in retaining moisture, reducing weed growth, and preventing erosion. Mulch can also be used in places where conditions aren't adequate for or conducive to growing quality turf or ground covers. Mulches are typically wood bark chips, wood grindings, pine straws, nut shells, small gravel, and shredded landscape clippings.
6. A layer of organic mulch 3" deep shall be specified on the landscape plans in plant beds and around individual trees in turfgrass areas. Use of byproduct or recycled mulch is recommended. Mulch is not required in annual beds. Mulch rings should extend to at least 3 feet around freestanding trees and shrubs. All mulch should be renewed periodically. Mulches should be kept at least 6 inches away from any portion of a building or structure, or the trunks of trees. Plastic sheeting and other impervious materials shall not be used under mulched areas.

H. Fertilizer Management

[Guidance: RULE 5E-1.003(2)(d), F.A.C. contains the following provisions for golf courses, parks and athletic fields. As such, no additional specific requirements are included for these types of urban turf. The appropriate Best Management Practices listed below must be followed on such sites for nutrient management activities:

- (d) Fertilizers labeled for sports turf at golf courses, parks and athletic fields shall:*

1. Have directions for use not to exceed rates recommended in the document titled SL191 “Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization Based on Mehlich I Extractant”, dated March 2007, which is hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Soil and Water Science Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611 or the following website: <http://edis.ifas.ufl.edu/SS404>.
2. Have directions for use in accordance with the recommendations in “BMP’s for the Enhancement of Environmental Quality on Florida Golf Courses”, published by the Florida Department of Environmental Protection, dated January 2007. Copies may be downloaded from <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.

Note that this does not exempt applicators at these sites from the required basic Green Industry BMP training. If other provisions of the ordinance are not appropriate for these sites, such exceptions should be noted.]

1. Fertilizer content and application rates

- a. Fertilizers Applied to Turf and/or Landscape Plants within (MUNICIPALITY / COUNTY) shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements For Urban Turf Fertilizers.
- b. Nitrogen or phosphorus Fertilizer shall not be applied to turf or landscape plants except as provided in (a) above unless a soil or tissue deficiency has been verified by an approved test. *[Guidance: Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. FDEP has sponsored research (ca. 2007-2008) to compare several retail home test kits to IFAS extension lab results for a wide variety of Florida soils. This may allow more convenient testing by homeowners, although enforcement may be more difficult without written test results.]*

2. Timing of fertilizer application

No Applicator shall apply Fertilizers containing nitrogen and/or phosphorus to Turf and/or Landscape Plants during the Prohibited

Application Period. *[Guidance: One of the most controversial issues associated with recent fertilizer ordinances enacted by local governments is the Prohibited Application Period. Some ordinances have prohibited the application of fertilizer, even slow release formulations, during the summer rainy season, typically June 1 to September 30. The reasoning is that rain occurs frequently, saturating the soil, leading to more runoff. Fertilizer management is largely about keeping the nitrogen and/or phosphorus in the root zone where it can be used by the turf. While periods of heavy rainfall contribute to washing fertilizer out of the root zone, the health of the turf grass is an equally important factor. Healthy turf grass with healthy roots and leaves is important to minimizing fertilizer movement. Because turf grass requires nitrogen throughout its growing period, its health can be negatively affected if nitrogen is deficient. Care should be taken with regards to the Prohibited Application Period until the science is better defined. Accordingly, sound science, common sense, and carefully reasoned judgment are recommended in determining how to define the Prohibited Application Period.]*

3. Application practices

- a. Spreader deflector shields are required when Fertilizing via rotary spreaders. Deflectors must be positioned such that Fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.
- b. Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.
- c. Any Fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.
- d. Fertilizer released on an impervious surface must be immediately contained and either legally applied to Turf or any other legal site, or returned to the original or other appropriate container.
- e. In no case shall Fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.

4. Fertilizer free zones

- a. Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector

shield or drop spreader is used, of any pond, stream, water course, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall.

- b. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations.
- c. Newly planted Turf and/or Landscape Plants may be fertilized in this Zone only for the first sixty (60) day establishment period, but caution shall be used to prevent direct deposition of nutrients into the water.

I. Pesticide Management

- 1. All landscape applications of pesticides, including Weed and Feed products, for hire should be made in accordance with State and Federal Law and with the most current version of the Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries. *[Guidance: The use of “should” in the preceding sentence is required, because “shall” would create a violation of 487.051(2), Florida Statutes. Regulation of Pesticides is Pre-empted to the Florida Dept. of Agriculture and Consumer Services (FDACS) by state law.]*
- 2. Property owners and managers are encouraged to use an Integrated Pest Management Strategy as currently recommended by the University of Florida Cooperative Extension Service publications.
- 3. When using pesticides, all label instructions are state and federal law and must be adhered to. **The Florida Department of Agriculture and Consumer Services is responsible for enforcement of pesticide laws.**

J. Landscape and Irrigation Maintenance

[Guidance: Proper landscape and irrigation maintenance will preserve and enhance a quality landscape and help to ensure water-efficiency.]

- 1. In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways.

- 2. Landscape maintenance for hire shall be performed in accordance with recommendations in the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*.
- 3. Landscape maintenance by homeowners should be performed in accordance with recommendations of the University of Florida Cooperative Extension Service and Florida Yards & Neighborhoods publications.
- 4. A regular irrigation maintenance schedule shall include but not be limited to checking, adjusting, and repairing irrigation equipment; and resetting the automatic controller according to the season.
- 5. To maintain the original performance and design integrity of the irrigation system, repair of the equipment shall be done with the originally specified materials or their equivalents.

K. Shoreline Considerations

[Guidance: Ideally, shorelines should remain completely natural to most effectively use or absorb nutrients. Unfortunately, many waterfront property owners have removed beneficial vegetation and formed sandy beaches along their shorelines. This loss of a natural buffer may contribute to shock loads of nutrients and other pollutants affecting the waterbody and may lead to erosion. Florida Fish and Wildlife Conservation Commission Rule 68F-20.002 (1) states “No person shall attempt to control, eradicate, remove, or otherwise alter any aquatic plants in waters of the state, including those listed in s. 369.251, F.S., except as provided in a permit issued by the department unless the waters in which aquatic plant management activities are to take place are expressly exempted in Rule 68F-20.0035, F.A.C.”

Shoreline vegetation can often be restored through aquascaping. Advice regarding appropriate plants for aquascaping and locating sources for these plants in your area may be obtained by contacting the Department of Environmental Protection’s Bureau of Invasive Plant Management, the UF Cooperative Extension Service in each county and/or the UF Center for Aquatics and Invasive Plants. A simple, free of charge permit may be required from DEP’s Bureau of Invasive Plant Management for activities involving aquatic plants along freshwater shorelines.

Florida Fish and Wildlife Conservation Commission Rule 68F-52.003 (4) states “Only native aquatic

plants cultured in a nursery regulated by the Department of Agriculture and Consumer Services or collected from an approved wild collection site shall be used for the re-vegetation, restoration, or mitigation of wetlands in sovereignty lands. No prohibited or non-native aquatic plant shall be placed in, or knowingly be distributed for use in natural waters, or waters connected to natural waters. Non-native plants not on the prohibited plant list may be used in artificially created ponds and water gardens that are not connected to natural waters.”

Vegetation height should extend well above the water level. There is a direct correlation between height and a plant’s ability to absorb nutrients. Shoreline plants should not be fertilized or treated with herbicides, except in special cases.

Some developers, water management districts and local governments are designing and building stormwater wet detention systems that closely resemble natural waterbodies. In some cases, developers are offering adjacent property as premium waterfront real estate. While this is generally a very good practice that promotes sophisticated designs, it may cause some problems if people are not aware that the stormwater pond’s purpose is to capture and accumulate pollutants. Consequently, it may appear contaminated if it is simply doing its job. This may prompt misdirected requests for action to clean it up or even protect it. It should also be noted that stormwater ponds that connect to waters of the state may be regulated as waters of the state.

Education is important so people understand that the rules and expectations for natural and man-made waterbodies are different.]

1. Grading and design of property adjacent to bodies of water shall conform to Federal, State and Local regulations which may include but is not limited to the use of berms and/or swales to intercept surface runoff of water and debris that may contain fertilizers or pesticides.
2. A voluntary six (6) foot low maintenance zone is recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent (MUNICIPALITY /COUNTY) Code regulations apply, [Guidance: Such as 9A.2, above, for new developments.] this provision does not

relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone. [Guidance: Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may be a greater pollution hazard than occasional proper applications of fertilizer.]

3. When mowing near the shoreline, direct the chute away from the water body. Riparian or littoral zone plants that do not require mowing or fertilization should be planted in these areas. See the *Florida Waterfront Property Owners Guide* or the Florida Fish and Wildlife Conservation Commission’s Invasive Plant Management Section for more information. Where water levels vary considerably, care must be taken in the selection of these plants.
4. Decks along the waters edge and into the water shall meet all local and state government regulations and any other lawful requirements. The maximum distance any structure may protrude into the water is X feet (To be inserted by local government) from the normal high water mark on the bank. The maximum total width of a deck structure along the shoreline of any lot is 20% of the waterfront footage of that lot. The remainder of the shoreline should remain as natural as possible. Lot owners located on ditches may add 20' to their front footage for calculation purposes. Special permits may be required. No structures are permitted that obstruct the flow of water.
5. Mangrove trimming shall be performed in accordance with Sections 403.9321 - 403.9334, Florida Statutes. The *Florida Waterfront Property Owners Guide* published by the Florida Department of Environmental Protection should be referred to for additional information about Florida-friendly shoreline practices.

10. EDUCATION

[Guidance: To assist in public information, the education of its citizens, and the effective implementation of this ordinance, the (City/County) should coordinate its efforts with those of the Water Management District and the (_____) County) Agricultural Extension Service and

other agencies. These entities should jointly sponsor workshops on the design principles and standards of Florida-Friendly Landscapes. Informational signs should be displayed and brochures made available for public use. Government facilities should serve as educational examples and demonstration sites of building, landscape, and/or design principles related to natural resource conservation including water, energy, and landscapes.]

- A. All persons providing landscape maintenance services for hire (including appropriate City/County Maintenance Operations staff, and institutional landscape workers) shall be trained in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries
 - a. within one year of the effective date of this ordinance if fertilizer is applied, or
 - b. within 2 years if the business is not involved in the application of fertilizer.
 - c. Any person that applies fertilizer for hire or in the course of their employment shall hold a current Certificate of Completion in the Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries.
 - d. At least one person holding a current Certificate of Completion in the Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries shall be present at all times on any job site while work is in progress.

[Guidance: Due to literacy and language difficulties, some employees may not be able to pass the test to obtain the certificate of completion. However, this does not relieve the business owner from the obligation to train these employees in the BMPs, at least in all modules that apply to their duties.]

- B. New employees shall be trained within 180 days of starting a new position.

11. INCENTIVES

[Guidance: Local governments have a full range of options to offer incentives for development/landscape designs to exceed the design principles and standards set forth and established by this ordinance. Local governments may wish to consider any or all of the following examples, and are free to consider other alternatives.]

- A. Any development that exceeds the water-efficient design principles and standards established

by this ordinance shall receive a reduction in the (City/County) permit application fee. [or stormwater utility rate, etc.]

- B. Individual home owners or residents who are not required to but voluntarily submit a development/landscape design which meets or exceeds the Florida-friendly design principles and standards established by this ordinance shall receive [Guidance: Expedited permitting, a reduction of their stormwater utility water charges; a x% reduction in their building permit fee, property tax reduction, or other incentive within the purview of local government]. This reduction will remain in effect provided that the landscaped areas are consistently maintained in accordance with Florida-Friendly Landscape principles and the total monthly water consumption does not exceed X gallons (To be inserted by local government).
- C. Businesses that use the recommended practices may be recognized as a Green Business through the FDEP Green Business Program and may use this in their advertising and promotion.. (Comment: FDEP, in cooperation with the University of Central Florida Stormwater Management Academy, has established “Green Business” pilot programs in Cocoa Beach and Orlando. Additionally, Sarasota County, Lakeland, and Jacksonville have established Green Business Programs. For more information, please visit: <http://www.cityofcocoa.beach.com/greenbusiness.htm>)

[Guidance: These incentives are meant only to be examples. Local governments should consider what incentives are appropriate and meaningful to their constituents.]

12. ENFORCEMENT AND MONITORING

Implementation and enforcement of these regulations shall consist of:

A. Licensing

[Guidance: Some care may need to be taken to modify occupational license ordinances to make this section work, depending on grouping of license classes. Known statewide providers of such training are: the University of Florida Cooperative Extension Service, The Florida Department of Environmental Protection, and the Florida Nursery, Growers and Landscape Association (FNGLA). Some companies may provide such training in-house and some industry suppliers or associations may offer training to their customers.]

1. All Commercial Applicators of Fertilizer within the unincorporated area of (MUNICIPALITY/COUNTY), shall abide by and successfully complete training and continuing education requirements in minimizing nitrogen leaching and phosphorus runoff from fertilizer applications prior to obtaining a (MUNICIPALITY/COUNTY) Local Business Tax Certificate for any category of occupation which may apply any Fertilizer to Turf and/or Landscape Plants. Commercial Fertilizer Applicators shall provide proof of completion of an approved training program to the (MUNICIPALITY/COUNTY) Tax Collector's office within one year of the effective date of this ordinance.
2. All businesses applying fertilizer to Turf and/or Landscape Plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has an appropriate certification (i.e., the Florida Department of Environmental Protection's Green Industries Best Management Practices certification), prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of certification to the (Municipality/County) Tax Collector's Office.
3. Non-commercial applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.
4. Within 2 years of the effective date of this ordinance, all businesses performing design, installation, or maintenance services involving Turf and/or Landscape Plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that all supervisory employees have an appropriate certification (i.e., the Florida Department of Environmental Protection's Green Industries Best Management Practices certification), prior to the business owner obtaining a Local Business Tax Certificate. Non-supervisory employees that do not

apply fertilizer must be trained but do not require certification. Owners for any category of occupation which may perform design, installation, or maintenance services involving Turf and/or Landscape Plants shall provide proof of certification and training to the (Municipality/ County) Tax Collector's Office. This provision does not apply to the licensed professional practice of Landscape Architecture, Architecture, or Engineering.

[Guidance: Some landscape workers may be illiterate or otherwise unable to achieve certification. Evidence of attending the training, coupled with certified supervision, is considered adequate for nonsupervisory personnel that do not handle fertilizers.]

B. Inspections

1. The (City/County) Code Enforcement Officer or designated inspectors shall be authorized and empowered to make inspections at reasonable hours of all land uses or activities regulated by this ordinance, in order to determine if applicable provisions of the Code of Ordinances and regulations relating to Florida-friendly landscaping are being followed.
2. Inspections may be made without notice, and refusal to allow such an inspection shall be deemed a violation of this ordinance. Such failure to permit an inspection shall be sufficient grounds and probable cause for a court of competent jurisdiction to issue an administrative warrant for the purpose of inspecting, surveying or examining said premises.
3. In the event a building, structure, or land appears to be vacant or abandoned, and the property owner cannot be readily contacted in order to obtain consent for an inspection, the Code Enforcement Officer or inspector may enter into or upon any open or unsecured portion of the premises in order to conduct an inspection thereof.
4. The Code Enforcement Officer or inspector shall be provided with official identification and exhibit such identification when making any inspection.
5. It shall be the duty of all law enforcement officers to assist in making inspections when such assistance is requested by the Code Enforcement Officer or inspector.

C. Notice of Violation, Notice of Hearing and Hearing Procedure

1. Whenever the Code Enforcement Officer or an inspector determines that there is a violation of this ordinance, the officer or inspector shall follow the procedures established for bringing a case before the Code Enforcement Board or any alternative code enforcement body or shall seek injunctive relief as provided below.
2. A notice to cease a land use activity or permit issued under this ordinance shall not relieve the owner or operator of the obligation to comply with any other applicable state, regional or local code, regulation, rule ordinance, or requirement. Nor shall said notice or permit relieve any owner or operator of any liability of violation of such codes, regulations, rules, ordinances, or requirements.

D. Injunctive Relief

If any person engages in activities regulated by this ordinance without having obtained an approved permit as provided within this ordinance or continues in violation of the provisions of this ordinance or the regulations promulgated pursuant thereto, then the (City/County) may file an action for injunctive relief in a court of competent jurisdiction.

13. FEES

Permit Fees

Prior to the issuance of a permit, the applicant shall pay a fee as set forth by the Resolution No. _____, 20___. Such fee shall be used to defray the cost of monitoring the compliance of this ordinance.
[Guidance: or may be included in building permit fee]

14. VARIANCES

As provided in Chapter ___ of these Land Development Regulations, the Board of Adjustment is hereby authorized to grant variances in accordance with stated provisions and can attach conditions to variances granted.

15. VIOLATIONS AND PENALTIES

- A. For any violation which does not constitute a threat to life or property, the (City/County) shall have the authority to issue a citation and/or to withhold a certificate of occupancy.

The citation shall be in the form of a written official notice issued in person or by certified mail to the owner of the property, or to his agent, or to the person doing the work. The receipt of a citation shall require that corrective action be taken within thirty (30) calendar days, unless otherwise extended at the discretion of the (City/County). If the required corrective action is not taken within the time allowed, the (City/County) may use any available civil or criminal remedies to secure compliance, including revoking a permit.

- B. The (City/County) shall have resource to such civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of this section of this ordinance, including injunctive relief to rejoin and restrain any person from violating the provisions of this section of this ordinance and to recover such damages as may be incurred by the implementation of specific corrective actions.
- C. A conviction for violation of the provisions of this section shall be punishable by a fine or imprisonment, or both such fine and imprisonment as provided in Section 125.69, Florida Statutes.

16. CONFLICTS AND RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern. Regardless of any other provision of this ordinance, no land shall be used and no structure erected or maintained in violation of any state or federal pollution control or environmental protection law or regulation.

17. SEVERABILITY

This ordinance and the various parts, sections, subsections and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection, section or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of the ordinance shall not be affected thereby. If any part, sentence, paragraph, subsection, section or clause be adjudged unconstitutional or invalid as applied to a particular property, building, or other structure, it is hereby provided that the application of such

portion of the ordinance to other property, buildings, or structures shall not be affected thereby.

18. INCLUSION IN CODE, CODIFICATION, SCRIVENERS ERRORS

The provisions of this ordinance shall become and be made a part of or replace the existing landscape regulations of the (City/County of _____). Sections of the ordinance may be renumbered or relettered and the word “ordinance” may be changed to “section”, “chapter”, “article”, or such other appropriate word or phrase in order to accomplish such intentions. Sections of this ordinance may require the correction of typographical errors which do not affect the intent. Such corrections may be authorized without need of a Public Hearing, by filing a corrected or recodified copy of same with the clerk of the (City/County of _____).

19. REPEAL

The existing regulations of the (City/County of _____), being Chapter _____ of the City/County Code as amended, are hereby repealed. The adoption of this ordinance; however, shall not affect nor prevent any pending or future prosecution of, or action to abate, any existing violation of said Chapter , as amended, if the violation is also a violation of the provisions of this ordinance.

[Guidance: Repeal is only necessary if existing ordinances conflict with the new ordinances.]

20. EFFECTIVE DATE

This ordinance shall take effect _____, 20____.

PASSED ON FIRST READING _____(Date)

PASSED ON SECOND AND FINAL READING AND ADOPTED _____(Date)

_____(Signature)(Name)
Mayor-Commissioner or Chairman

Attest: _____(Signature)(Name)
City Clerk or Clerk of Circuit Court

Approved as to form and correctness:

_____(Signature)(Name)
City or County Attorney

Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes

JANUARY 2009

INTRODUCTION

This attached Model Fertilizer Use Ordinance is another tool to reduce sources of nutrients coming from urban landscapes to reduce the impact of nutrients on Florida's surface and ground waters. However, restricting fertilizer use by itself will not eliminate the impacts of nutrients from urban landscapes. Rather, a comprehensive approach is needed that includes site plan design, landscape design, irrigation system design, and fertilizer application. To assist local governments in improving their existing land development regulations, several "model" ordinances have been developed. These include:

- "Low Impact Design" ordinances which seek to reduce the impact of urbanization on our natural resources by stressing "source controls" that either minimize the generation of stormwater or minimize the pollutants that can get into stormwater. For example, promoting development designs that minimize clearing of natural vegetation and the compaction of urban soils. A Model Springs Protection Code is being developed by DCA, DEP, and other stakeholders that will include specific Land Development Regulation recommendations that promote Low Impact Design. This Model Code will be available in 2009.
- "Landscape Design Ordinances" since this is a major determinant in the amount of fertilizer and irrigation that is needed to maintain healthy urban landscapes and minimize adverse impacts on water resources. A model Landscape Ordinance entitled "Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida-friendly Lawns and Landscapes" was developed by a group of agencies, industries, and interest groups over a two year period and published in 2003. It was fundamentally an adaptation of earlier water conservation ordinances revised to include water quality protections for compliance with Total Maximum Daily Load (TMDL) or stormwater NPDES permit requirements. The language focuses on continuing education of lawn care and landscape professionals, proper planning and supervision during development and construction, and the use of best management practices, including the Florida-Friendly Landscape Program. This model ordinance has been renamed "Florida-Friendly Landscapes Model Guidelines for Ordinance Language for Protection of Water Quality and Quantity" updated for 2008 and may be downloaded from: <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.
- Finally, the 2004 Florida Legislature directed Florida's water management districts to work with interested parties to develop landscape irrigation and Florida-Friendly design standards for new construction (section 373.228, F.S.). Local governments are to use the standards and guidelines when developing landscape irrigation and Florida-Friendly ordinances. The Committee on Landscape Irrigation and Florida-Friendly Design Standards convened and developed the standards. They are published in a booklet called *Landscape Irrigation and Florida-Friendly Design Standards* (December 2006). This document can be downloaded from: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm.

1. FINDINGS

As a result of impairment to (MUNICIPALITY / COUNTY)'S surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of (municipality/county), the governing body of (municipality / county) has determined that the use of fertilizers on lands within (municipality / county) creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the governing board of (municipality/county) finds that management measures [*Guidance: Optional "additional management measures than are otherwise"*] contained in the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008," may be required by this ordinance.

2. PURPOSE AND INTENT

This Ordinance regulates the proper use of fertilizers by any applicator; requires proper training of Commercial and Institutional Fertilizer Applicators; establishes training and licensing requirements; establishes a Prohibited Application Period; specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Ordinance requires the use of Best Management Practices which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with the misuse of fertilizers. These secondary and cumulative effects have been observed in and on

(MUNICIPALITY / COUNTY)'s natural and constructed stormwater conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. *[Guidance: as appropriate]* Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of (MUNICIPALITY / COUNTY) residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality.

3. DEFINITIONS

For this Article, the following terms shall have the meanings set forth in this section unless the context clearly indicates otherwise.

1. “**Administrator**” means the (MUNICIPALITY / COUNTY) Administrator, or an administrative official of (MUNICIPALITY / COUNTY) government designated by the City/County Administrator to administer and enforce the provisions of this Article.
2. “**Application**” or “**Apply**” means the actual physical deposit of fertilizer to turf or landscape plants.
3. “**Applicator**” means any Person who applies fertilizer on turf and/or landscape plants in (MUNICIPALITY / COUNTY).
4. “**Board or Governing Board**” means the Board of City/County Commissioners of (MUNICIPALITY / COUNTY), Florida.
5. “**Best Management Practices**” means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.
6. “**Code Enforcement Officer, Official, or Inspector**” means any designated employee or agent of (MUNICIPALITY / COUNTY) whose duty it is to enforce codes and ordinances enacted by (MUNICIPALITY / COUNTY).
7. “**Commercial Fertilizer Applicator**” means any Person who applies fertilizer on turf and/or landscape plants in (MUNICIPALITY / COUNTY) in

exchange for money, goods, services or other valuable consideration.

8. “**Fertilize**,” “**Fertilizing**,” or “**Fertilization**” means the act of applying fertilizer to turf, specialized turf, or landscape plants.
9. “**Fertilizer**” means any substance or mixture of substances, except pesticide/fertilizer mixtures such as “weed and feed” products, that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. *[Guidance: Regulation of pest control businesses and applicators, and of pesticide use, is preempted to the Florida Department of Agriculture and Consumer Services (FDACS) by Chapters 482.242, and 487.051 (2), F.S. and suspected pesticide misuse should be reported to FDACS. Weed and feed products are registered pesticides. The Limited Commercial Landscape Maintenance Certification Program does not allow landscape maintenance workers to make any kind of pesticide applications (including weed control and/or weed and feed products) to any turf areas. Per 482.165(3) F.S., a civil penalty for unlicensed application of pesticides, including weed and feed products, may not be less than \$500 or more than \$5,000 for each offense.]*
10. “**Guaranteed Analysis**” means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.
11. “**Institutional Applicator**” means any Person, other than a non-commercial or commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners and managers of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.
12. “**Landscape Plant**” means any native or exotic tree, shrub, or groundcover (excluding turf).
13. “**Low Maintenance Zone**” means an area a minimum of six (6) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.
14. “**Pasture**” means land used for livestock grazing that is managed to provide feed value.

15. “Person” means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.
16. “Prohibited Application Period” means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of (CITY/COUNTY), issued by the National Weather Service, or if heavy rain² is likely.
17. “(MUNICIPALITY /COUNTY) Approved Best Management Practices Training Program” means a training program approved by the (MUNICIPALITY /COUNTY) Administrator that includes at a minimum, the most current version of the Florida Department of Environmental Protection’s “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008,” as revised and any more stringent requirements set forth in this Article.
18. “Slow Release,” “Controlled Release,” “Timed Release,” “Slowly Available,” or “Water Insoluble Nitrogen” means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.
19. “Turf,” “Sod,” or “Lawn” means a piece of grass-covered soil held together by the roots of the grass.

4. APPLICABILITY

This Ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of (MUNICIPALITY/COUNTY), unless such applicator is specifically exempted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts.

[Guidance: Local government may adopt additional or more stringent provisions to the model ordinance. However, the local government should consider the disadvantages of confusing jurisdictional differences and should clearly demonstrate they meet at least one of the following criteria:

- They have verified impaired waters and are facing existing or possible TMDL requirements (under state and federal laws); or
- They have verified harm to human health or harm to the environment that warrants additional fertilizer requirements; or
- That they will improve water quality or prevent future impacts of fertilizers on the environment; and that the additional regulation is the most reasonable and cost-effective method of attaining these goals.]

[Guidance: Florida Statutes 125.568(3), 166.048(3), and 373.185(3) provided that a deed restriction or covenant entered after October 1, 2001, or local government ordinance, may not prohibit any property owner from implementing Xeriscape or Florida-Friendly Landscape practices on his or her land. Any restrictions created after this date are void.]

5. TIMING OF FERTILIZER APPLICATION

No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period.

[Guidance: One of the most controversial issues associated with recent fertilizer ordinances enacted by local governments is the Prohibited Application Period. Some ordinances have prohibited the application of fertilizer, even slow release formulations, during the summer rainy season, typically June 1 to September 30. The reasoning is that rain occurs frequently, saturating the soil, leading to more runoff. Fertilizer management is largely about keeping the nitrogen and/or phosphorus in the root zone where it can be used by the turf. While periods of heavy rainfall contribute to washing fertilizer out of the root zone, the health of the turf grass is an equally important factor. Healthy turf grass with healthy roots and leaves is important to minimizing fertilizer movement. Because turf grass requires nitrogen throughout its growing period, its health can be negatively affected if nitrogen is deficient. Care should be taken with regards to the Prohibited Application Period until the science is better defined. Accordingly, sound science, common sense, and carefully reasoned judgment are recommended in determining how to define the Prohibited Application Period.]

6. FERTILIZER FREE ZONES

Fertilizer shall not be applied within ten (10) feet, or three (3) feet if a deflector shield or drop

² World Meteorological Organization definition of heavy rain: Rainfall greater than or equal to 50 mm (2 inches) in a 24 hour period. <http://severe.worldweather.org/rain/>, http://www.wrh.noaa.gov/sew/MediaGuide/TermsOutlooks_Watches_Warnings.pdf.

spreader is used, of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this Zone only for the first sixty (60) day establishment period, but caution shall be used to prevent direct deposition of nutrients into the water.

7. LOW MAINTENANCE ZONES

A voluntary six (6) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone. *[Guidance: Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may be a greater pollution hazard than occasional proper applications of fertilizer.]*

8. FERTILIZER CONTENT AND APPLICATION RATES

[Guidance: RULE 5E-1.003(2)(d), F.A.C. contains the following provisions for golf courses, parks and athletic fields. As such, no additional specific requirements are included for these types of urban turf. The appropriate Best Management Practices listed below must be followed on such sites for nutrient management activities:

(d) Fertilizers labeled for sports turf at golf courses, parks and athletic fields shall:

- 1. Have directions for use not to exceed rates recommended in the document titled SL191 "Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization Based on Mehlich I Extractant", dated March 2007, which is hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Soil and Water Science Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611 or the following website: <http://edis.ifas.ufl.edu/SS404>.*

- 2. Have directions for use in accordance with the recommendations in "BMP's for the Enhancement of Environmental Quality on Florida Golf Courses", published by the Florida Department of Environmental Protection, dated January 2007. Copies may be downloaded from <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.*

Note that this does not exempt applicators at these sites from the required basic Green Industry BMP training. If other provisions of the ordinance are not appropriate for these sites, such exceptions should be noted.]

- (a) Fertilizers applied to turf and/or landscape plants within (MUNICIPALITY / COUNTY) shall be formulated and applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, Labeling Requirements For Urban Turf Fertilizers.*
- (b) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above unless a soil or tissue deficiency has been verified by an approved test. [Guidance: Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. FDEP has sponsored research (ca. 2007-2008) to compare several retail home test kits to IFAS extension lab results for a wide variety of Florida soils. This may allow more convenient testing by homeowners, although enforcement may be more difficult without written test results.]*

9. APPLICATION PRACTICES

- a. Spreader deflector shields are required when fertilizing via rotary (broadcast) spreaders. Deflectors must be positioned such that fertilizer granules are deflected away from all impervious surfaces, fertilizer-free zones and water bodies, including wetlands.*
- b. Fertilizer shall not be applied, spilled, or otherwise deposited on any impervious surfaces.*
- c. Any fertilizer applied, spilled, or deposited, either intentionally or accidentally, on any impervious surface shall be immediately and completely removed to the greatest extent practicable.*
- d. Fertilizer released on an impervious surface must be immediately contained and either legally applied to turf or any other legal site, or returned to the original or other appropriate container.*
- e. In no case shall fertilizer be washed, swept, or blown off impervious surfaces into stormwater drains, ditches, conveyances, or water bodies.*

10. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways.

11. EXEMPTIONS

The provisions set forth above in this Ordinance shall not apply to:

- (a) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes, provided that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.
- (b) other properties not subject to or covered under the Florida Right to Farm Act that have Pastures used for grazing livestock provided that fertilizers are applied in accordance with the appropriate best management practices manual adopted by the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy for the crop in question.

12. TRAINING

- (a) All commercial and institutional applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), shall abide by and successfully complete the six-hour training program in the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscapes” program.
- (b) Non-commercial applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

[Guidance: A local government may establish a certification/education program for the application of fertilizers indicating the completion of an education program for special local requirements not covered in the above programs. Persons with only statewide certification may be required to review a local publication and sign an affidavit attesting to their reading and understanding the special local requirements.]

13. LICENSING OF COMMERCIAL APPLICATORS

- (a) All commercial applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), shall abide by and successfully complete training and continuing education requirements in the “Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries”, offered by the Florida Department of Environmental Protection through the University of Florida IFAS “Florida-Friendly Landscapes” program, prior to obtaining a (MUNICIPALITY / COUNTY) Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the (MUNICIPALITY / COUNTY) Tax Collector’s office within 180 days of the effective date of this ordinance. *[Guidance: The ordinance is prospective only. Occasions may exist for a finite time where pre-existing contract terms mandate practices not in accordance with the BMPs. Such terms should be voided at contract expiration.]*
- (b) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has an appropriate “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the (Municipality/ County) Tax Collector’s Office.

Florida-Friendly Landscaping Covenants, Conditions and Restrictions



Prepared for
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Table of Contents

I. OVERVIEW	29	IV. EXHIBIT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FLORIDA-FRIENDLY DEVELOPMENT	31
II. ENFORCEABILITY AND AMENDABILITY OF CCRs	30		
III. PURPOSE	30		

I. OVERVIEW

As more people move to Florida each day, continued land development is inevitable. It is imperative that Floridians find a way to coexist with their natural environment or face the possibility of forever losing valuable resources such as pristine waters and native species. To protect Florida's fragile environment, developers, homeowners, and homeowner associations must understand and address the environmental impact of their land use decisions. By minimizing their adverse impacts on the environment, these individuals and organizations can make a positive difference in preserving Florida's natural resources.¹ Accordingly, to encourage the implementation of low impact land use strategies at the homeowner level, this document recommends that developers, homeowners, and homeowner associations place Florida-Friendly Landscaping restrictive covenants on their properties.

A Florida-Friendly Landscape is one where the right plants are in the right place, watering is done efficiently, fertilizing is done appropriately, mulch is used, wildlife is attracted, yard pests are managed responsibly, yard waste is recycled, stormwater runoff is significantly reduced, and the waterfront is protected from pollutants.² Currently, developers interested in incorporating these practices into their community's documents and plans have no concise guidelines or certainty as to their enforcement throughout the lifetime of the project. Adding these provisions into the community's declaration of covenants gives them the force of law. Therefore, a developer acquires a fair amount of certainty that a project intended to be marketed and sold as "Florida-Friendly" will retain many of the environmental characteristics that attracted buyers in the first place.³

This document is a result of a joint project between Florida Yards & Neighborhoods and the Conservation Clinic at the University of Florida's Levin College of Law. It contains a practical framework of model conservation restrictive covenants, which developers or associations may selectively insert in the governing documents of their community associations. The model language offered is intended to be used by developers as guiding princi-

ples in the writing process of their own restrictive covenants or, as they are commonly known, the Declaration of Covenants, Conditions and Restrictions "CCRs."

This document provides sample language for landscaping provisions and language for other provisions that establish a system to effectively enforce these standards. By no means is it to be considered a complete CCR or a substitute for formal legal advice. A lawyer should always be consulted in the drafting of this important document and changes are encouraged to accommodate specific site conditions. Drafters should also consult relevant municipal and state laws which prevail over any language set forth herein. Any language included in a CCR which goes against law or public policy is immediately held to be invalid.⁴

The annotations and footnotes serve to guide the reader by giving background information or explanations that clarify certain provisions. The goal of achieving environmental impact reductions by using best practices will be achieved as more communities incorporate provisions such as the ones provided in this document into their own CCRs. Also, a key aspect to achieving this goal is homeowner education by the developer or by the community's association.

Given the complexity of the subject and the possibility of new technical data and government regulation in the field of water conservation, Florida-Friendly Landscaping and pollution prevention, the language in this document might quickly become outdated. The Florida Yards and Neighborhoods extension office at the University of Florida works diligently to keep up with the latest trends in these fields and can be contacted for more information. The Florida Yards & Neighborhoods also has offices in counties around the state which can be located on the web at <http://fyn.ifas.ufl.edu> or <http://FloridaYards.org> or <http://www.SolutionsForYourLife.org/fyn> or contacted at (352) 392-1831 Ext.243 Also, homeowners wishing to obtain additional recommendations for a specific region in Florida may check updated versions of other University of Florida's IFAS publications at <http://edis.ifas.ufl.edu/> or <http://SolutionsForYourLife.com>.

¹ FL Yards & Neighborhoods Handbook, *A Guide to Environmentally Friendly Landscaping*, 2 (2nd ed. 2003).

² FL Yards & Neighborhoods Handbook 3rd Edition, *A Guide to Florida-Friendly Landscaping* (3rd ed. 2006).

³ But see Patrick A. Randolph, Jr., *Symposium: Common Interest Development Communities: Part II: Changing the Rules: Should Courts Limit the Power of Common Interest Communities to Alter Unit Owners' Privileges in the Face of Vested Expectations?*, 38 Santa Clara L. Rev. 1081, 1105 (1998) (noting that courts do not protect an expectation that a development within a subdivision will remain unchanged, but rather only assure that the changes will be uniform in application).

⁴ A Patrick Rohan, *Real Estate Transactions: Home Owner Associations and PUDs – Law and Practice*, §8.00-8.28, (1977).

II. ENFORCEABILITY AND AMENDABILITY OF CCRS

According to newly enacted legislation, homeowners' association documents may not prohibit the inclusion of "Xeriscaping" or "Florida-Friendly Landscaping" provisions.⁵ The main concern for developers or homeowners who are interested in conserving water and protecting the environment would be the ability to enforce and amend these provisions in their community's declarations of covenants. The reality of the matter is that since this topic is fairly new, not much case law can be found on the subject. Therefore, inferences have to be made from cases that deal with amending or enforcing restrictive covenants in subjects unrelated to water conservation or landscaping.

First, rules included in the declaration of covenants are presumed to be valid since each purchaser had adequate notice of these before buying a lot and voluntarily chose to purchase lots encumbered by restrictions.⁶ Therefore, some provisions included in the declarations do not necessarily have to be deemed reasonable since the court will uphold them as long as they are not "clearly 'ambiguous,' applied arbitrarily, or violative of public policy or a fundamental constitutional right."⁷ To be legally enforceable, rules regulating the use of property must be reasonable.⁸

The reasonableness standard comes into play where a court is asked to review the appropriateness of amendments to restrictive covenants. Generally, courts are more generous when reviewing amendments voted on by property owners rather than unilateral amendments done by the homeowners associ-

ation or an equivalent representative group.⁹ The only discernible limitation placed on any covenant amendment seems to be that it must preserve the "basic expectations created in the original scheme" of development.¹⁰ Also, developers may retain a limited amount of power to amend the restrictions before turnover, but it must be exercised in a reasonable manner and must preserve the original scheme of development.¹¹ Some states have an additional judicial limitation on amendments to the restrictive covenants which provides that all property owners have to be affected equally by any modification.¹²

Two areas deserve special attention from people concerned about enforcing and maintaining a "Florida-Friendly" community. First is the possibility of some restrictions to be judicially nullified due to changes that occur outside the restricted community. This occurred in Shalimar Park Subdivision in Florida where the court held that the changes in zoning and uses of the immediate neighboring properties were so drastic that they nullified the protections of the restrictive covenants within this community since there was no detrimental effect on other property owners.¹³ Second, failure of a community to diligently enforce violations to the provisions in its CCRs may result in the future inability of the community to enforce on the specific violation.¹⁴

III. PURPOSE

The construction of community developments is still on the rise. In 2005, the number of new residential building permits issued in Florida was 280,463—a 9% increase from the previous year and almost double the number issued in 2000.¹⁵ This document is aimed at reducing the environmental impact of these

⁵ Fla. Stat. §720.3075(4) (2005).

⁶ *Hidden Harbour Estates v. Basso*, 393 So. 2d 637, 639 (Fla. Dist. Ct. App. 1981).

⁷ Zelica M. Grieve, *Note and Comment: Latera v. Isle at Mission Bay Homeowners Ass'n: The Homeowner's First Amendment Right to Receive Information*, 20 Nova L. Rev. 531, 542 (1995) (quoting in part from *Constellation Condominium Ass'n v. Harrington*, 467 So. 2d 378, 381 (Fla. Dist. Ct. App. 1985) and citing to *Hidden Harbour Estates v. Basso*, 393 So. 2d 637 at 640).

⁸ Fla. Stat. Ann. 718.123(1) (West 1988 & Supp. 1998).

⁹ See *Hidden Harbour Estates*, 393 So. 2d 637 (board adopted lawn watering and well building restriction to control water salinity problem in community); *Nelle v. Loch Haven Homeowners' Ass'n, Inc.*, 413 So. 2d 28 (Fla. 1982)

¹⁰ See Randolph, *supra* note 3 at 1119.

¹¹ *Nelle*, 413 So. 2d at 29.

¹² See Randolph, *supra* note 3 at 1103.

¹³ *Crissman v. Dedakis*, 330 So. 2d 103, 104 (Fla. Dist. Ct. App. 1976).

¹⁴ See, e.g. *Siering v. Bronson*, 564 So. 2d 247 (Fla. Dist. Ct. App. 1990). *But also see Mizell v. Deal* 654 So.2d 659 (Fla. Dist. Ct. App.1995) (finding that failure to complain of a restriction on mobile home placement in a community for one and half years *did not* amount to a waiver of the right to enforce the restrictions).

¹⁵ Florida Research & Economic Database, Annual Building Permits data in Florida, at <http://fred.labormarketinfo.com/analyzer/locpermitsdata.asp?geo=1201000000&cat=ECO&session=LOCPERMIT&subsession=99&areaname=Florida&tableused=BLDING&defaultcode=&roll=&rollgeo=04&time=20050100:20040100:20030100:20020100:20010100:20000100&currsubsessavail=&sgltime=0&siclevel=3&naicslvl=6> (last visited March 31, 2006).

new communities. Our goal is to inform the community associations of simple conservation methods and to increase the number of associations who follow these methods.

The University of Florida Levin College of Law's Conservation Clinic (Clinic) researched the legal process of including these CCRs in association documents. Since the governing documents—the articles of incorporation, the bylaws, and the declaration of covenants—of community associations establish the rights of owners, the state regulates the amendment of these documents. Once a developer has turned over control to the community association, changes to the governance structure become very difficult. The developer may no longer make unilateral amendments¹⁶ and the association may only amend the governing documents if: (1) a certain percentage of Owners are present at a noticed meeting, and (2) a certain percentage of these Owners present vote in favor of the amendment at a noticed meeting.¹⁷ However, prior to turnover, a developer may reserve the right to reasonably amend the documents without the consent of the association.¹⁸ Thus, a developer may easily influence communities to comply with manageable conservation practices from their inception by asking their lawyer to include these model conservation CCRs in the community's governing documents at the beginning stages of the project.

The Clinic also researched the most appropriate conservation methods available within the parameters of Florida Yards and Neighborhoods. In researching water conservation methods and Florida-Friendly Landscaping, the Clinic reviewed the CCRs of other communities, spoke with conservation professionals, and examined applicable Florida laws. Even though there are different, effective conservation methods for the various regions of Florida, the Clinic decided upon a state-wide approach when choosing what type of CCRs to include. After drafting the first version, the Clinic sought the advice of various developers and conservationists across the state concerning the practical application of these CCRs. The final document offered here reflects the points and concerns of these professionals.

However, by providing this document, the Clinic offers only a practical guide to creating conservation CCRs. It is not our purpose to give developers or

associations an extensive set of CCRs for community associations. These CCRs are based on current Florida law and current scientific data.¹⁹ As the law changes and new scientific data emerge, this document will also need to be revised. A lawyer should review any clauses to be inserted into an association's formal documents and amend them as necessary to account for conflicting law or any unique constraints within the association.

Developers and associations should also bear in mind that the model CCRs in this document are only one approach to increasing conservation in Florida. There are many effective conservation methods available and should be considered. Florida Yards and Neighborhoods brochures may be requested for additional information on the latest conservation methods and ideas.

IV. SAMPLE EXHIBIT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR A FLORIDA-FRIENDLY DEVELOPMENT

DECLARATION EXHIBIT FLORIDA-FRIENDLY DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS

1. PURPOSE.

The Florida-Friendly provisions in this Exhibit provide a framework to establish minimum standards for the development, installation, and maintenance of low-impact yards for communities who wish to reduce their ecological footprint in Florida. The wildlife provisions, address measures that communities can take to positively coexist with animals that will be attracted to the community by the Florida-Friendly Landscape.

2. DEFINITIONS.

2.1 "A Guide to Florida-Friendly Landscaping Handbook" means the most current version of the handbook produced by the Florida Yards & Neighborhoods of the University of Florida's IFAS Cooperative Extension Service.

2.2 "Certified Professional" means a person who possesses a certificate under Section

¹⁶ Fla. Stat. §720.3075(1)(a) (2005).

¹⁷ Fla. Stat. §720.306(1) (2005).

¹⁸ *Nelle*, 413 So. 2d at 29.

¹⁹ The data in this document is based on 2005 Florida law and information in the 2006 edition of the Florida Green Industries Best Management Practices handbook and the Florida Green Industries BMPs handbook.

3.3 below in Florida Green Industries Best Management Practices.

- 2.3 “Environmental Landscaping Review Committee” means a duly appointed committee made up of Certified Professionals with delegated authority from the Association to enforce certain parts of this Declaration and who advise the Association on overall environmental protection policy and enforcement issues.
- 2.4 “Florida-Friendly Landscaping” or “Xeriscape” means quality landscapes that conserve water and protect the environment and are adaptable to local conditions and which are drought tolerant. The principles of Xeriscape include planning and design, appropriate choice of plants, soil analysis which may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance. (Ref. §373.185 F.S.).
- 2.5 “Florida Green Industries Best Management Practices” include those practices defined in the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries.
- 2.6 “Managed Areas” includes any areas managed but not owned by the Home Owner Association.²⁰

3. FLORIDA-FRIENDLY LANDSCAPING

3.1 Areas Managed by the Association²¹

3.1.1 Association Services. In addition to the powers granted under its governing documents, the Association shall provide the following services:

- (a) Maintenance of all Common and Managed Areas and all County, Water Management District or other governmental properties located within the Property to the extent permitted by governmental authority.

(i) The Association’s maintenance of the Common Area and Managed Area shall specifically include, but shall not be limited to, the ponds, and the stormwater management system, to the extent permitted by the Water Management District and other governmental authorities.

(ii) Insect, pest and aquatic control to the extent that it is necessary or desirable in the judgment of the Association to supplement the service provided by the state and local governments, which shall include without limitation the Association’s maintenance of a contract for continued inspection, maintenance, and treatment for subterranean termites.

(b) Maintenance. The Environmental Landscaping Review Committee (the “Committee”) shall carefully monitor all pesticide applications, lawn and landscaping services, and fertilizer applications performed in the Common Areas and in the Managed Areas to ensure that Florida Green Industries’ BMPs are followed.

(c) General Use of Common Areas. Homeowners shall refrain from any acts that negatively impact the environment and wildlife in Common and Managed Areas.

3.2 Environmental Landscaping Review Committee.

3.2.1 General Duties. The Committee shall design, manage, and maintain the environmental landscape for the development. The Committee shall make all environmental landscaping

²⁰ In some communities, privately owned areas are managed by the Homeowners Association. This definition lets the reader know that there is a distinction between common areas and areas not owned but managed by the Home Owner Association.

²¹ In a situation where there is a Community Development District in addition to, or rather than, a Homeowner’s Association, the definition of Association may be amended to include the Community Development District.

decisions within the development in accordance with the guidelines set forth in the most current edition of the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries (“Florida Green Industries BMPs handbook”). Environmental landscaping decisions includes, but is not limited to, decisions connected to landscaping, irrigation, pesticide application, fertilization, water conservation, and wildlife conservation. If a Homeowner desires to make an environmental design change to their property including changes to their landscape or irrigation system, the Homeowner shall, prior to making any change, seek approval for such design change by submitting a design change application to the Committee. No later than 30 days after the date on which the Homeowner submits a design change application to the Committee, the Committee shall provide written notice to the Homeowner approving or denying the proposed design change. The Committee shall not approve any proposed design change that fails to conform to the development’s design concept. No approval shall be required for design changes involving the planting of annuals, planting of pre-approved plants or trees, or for the removal of deceased or diseased trees. The Committee shall keep, account, and maintain records for all environmental landscaping management and maintenance decisions made by the Committee. If a Homeowner submits a written request for documents relating to the management and maintenance of the development’s environmental landscaping, the Committee shall, within a reasonable time after the date on which it received the request, submit such documents to the Homeowner. The Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries is attached and incorporated by this reference as attachment “A”

3.2.2 Irrigation Plan & Operation Manual.

The Committee shall develop an irrigation plan for the Development that includes, but is not limited to, an irrigation system layout identifying the location of the irrigation system components, irrigation times and maximum irrigation application rate per lawn, area, or zone.²² The irrigation plan shall meet or exceed state and local water regulations. Subject to the limitations under Section 3.2.1, the Homeowners may request and the Committee shall provide a copy of materials including, but not limited to, the irrigation plan and the operation manual for all irrigation systems.

3.2.3 Irrigation Scheduling (Local governments cannot require this section, but HOAs can adopt voluntarily.)

The Committee shall create an irrigation schedule. If the Committee does not employ innovative technology including, but not limited to, soil moisture sensors or ET Controllers, the Committee shall, for all Managed Areas and Common Areas managed by the Association, create an irrigation schedule consistent with the UF/IFAS Extension irrigation scheduling recommendations to the extent that they meet or exceed state and local law. In developing an irrigation schedule, the Committee shall take into account seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture. The Committee shall, in accordance with the Irrigation Schedule, manage the irrigation systems used in the Common Areas and Managed Areas. The Committee shall account for and exempt newly installed landscaping in the irrigation schedule.

3.2.4 Irrigation Preventative Maintenance Program.

For Common Areas and Managed Areas, the Committee shall implement a preventative maintenance program that includes but is not limited to the following:

- (a) replacing worn or broken components,

²² Other requirements may be added depending on how broad the developer or association wishes the irrigation plan to be but the drafter should always be cautious and aware of local irrigation laws or rules. The plan should include exceptions for newly installed landscaping which usually requires longer irrigation timing.

- (b) identifying and repairing leaks,
- (c) identifying and repairing broken or faulty sprinkler heads,
- (d) identifying and repairing system malfunctions,
- (e) periodically calibrating irrigation system to determine proper watering time,
- (f) periodically monitor water bodies to detect sudden increase in algae growth, and
- (g) performing weekly visual inspections to identify excessive runoff including standing water.

3.2.5 Pesticide Records for Common Areas. The Committee shall obtain from the certified pesticide application company or from the Association, accurate pesticide application records including records for any restricted use pesticides used in the Common Areas and Managed Areas as may be required by Florida law.²³ The Committee shall maintain these pesticide records for 2 years from the application date or as may be required for pesticide applicators by Florida law.²⁴

3.2.6 Solar Power. The Association may not prohibit any Homeowner from installing solar power or water heating systems on the Homeowners' private property. The Association may regulate the aesthetics and construction of such systems.

3.2.7 Environmental Landscaping Violations. If the Committee has knowledge that a Property is not complying with the water conservation, landscaping, fertilizing, or pesticide application parts of this Declaration the Committee shall notify the Homeowner and give _____ days to

cure the problem. If the Homeowner does not cure the problem within the allotted time frame, the Committee may take reasonable measures to correct this problem, bill the Homeowner for the work performed on the Homeowner's Property to cure such problem and take any other enforcement actions as provided by this Declaration.

3.3 Certification Requirements. Only those employees of landscaping, fertilizing, or pesticide application companies who have a current certificate of completion of training in Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries from the UF/IFAS Extension Service and who demonstrate that the company's principles follow these Best Management Practices shall be allowed to service Homeowners' properties, Common Areas and Managed Areas in the Development. The Committee shall maintain an updated list of Certified Professionals who may perform landscaping, pesticide or fertilizing services within the Development and shall update this list every 6 months. Homeowners not using the for-hire contractors included in the Committee's Certified Professionals list shall obtain written permission from the Committee before any services are performed in a Homeowners property.

3.4 Florida-Friendly Landscaping. The Association may not prohibit any Homeowner from implementing Florida-Friendly Landscape or Xeriscape on the Homeowner's private property.²⁵

3.4.1 Pre-landscape Installation. Before landscape installation starts and for every lot where the Developer intends to install landscaping, the Developer shall, after final grade, obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.²⁶

²³ Florida pesticide law requires certified applicators to keep records for 2 years of all restricted use pesticides applied. See Fla. Stat. §487.160 (2005).

²⁴ The Florida Yards & Neighborhoods program recommends that pesticide records should be kept longer than 2 years for the successful implementation of an Integrated Pest Management program.

²⁵ Fla. Stat. §720.3075(4).

²⁶ An analysis of soil infiltration rate is also recommended but implies extra costs. For soil testing recommendations and information see the Soil and Water Science Department, Florida Cooperative Extension Service, University of Florida/IFAS at <http://edis.ifas.ufl.edu/SS156> (last visited 4/10/2006).

The Developer shall make this information available to the Association and to all purchasing Homeowners. If after turnover of control to the Association, the Association intends to install new landscaping in the Common or Managed Areas it may only do so if the soil testing information on file for that lot is less than ____ years old. If the soil tests on file for the lot where new landscape will be installed are more than ____ years old, the Association shall obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility. Homeowner's are strongly encouraged to follow the recommendations of a soil analysis from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility when installing new landscape on the Homeowner's Property.

- 3.4.2 Plant/Turf Selection and Design. In accordance with the most current version of the UF IFAS Florida Yards & Neighborhoods Plant List, the Developer shall select turfgrass and landscape plants suited to the soil and other site characteristics described under Section 3.4.1 above. The Developer shall design the landscape so that plants serve environmentally friendly functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the Development. The Association and the Homeowners shall use plants listed in a plant palette approved by the Committee or refer to the most current version of the UF IFAS Florida Yards & Neighborhoods Plant List.
- 3.4.3 Plant Installation. All plant installations shall be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.
- 3.4.4 Mulching. All mulching shall be conducted in accordance with the most

current version of the Florida Green Industries BMPs handbook guidelines. Mulch shall be placed at least 3-4" from the trunks of trees or the stems of landscape plants and shall be maintained at a depth of 2 - 3." Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2 - 3." Mulch shall be applied to a tree's drip line or beyond at least an 8' diameter around the tree. Organic mulch and recycled mulch including leaves, pine needles, grass, and shrub clippings are recommended. Cypress mulch is often made from waste wood generated in manufacture of these products, but it may also be produced from whole trees cut from wetlands. The use of cypress mulch may not be recommended.

3.4.5 Fertilizer Use.

- (a) Selection and Application. Homeowners are strongly encouraged to follow the fertilizing recommendations of the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping when fertilizing on their own. All fertilizing companies hired to service a Homeowners lawn shall follow Florida Green Industries BMPs and have a valid certification as prescribed in Section 3.2. Fertilizers and pesticides may not be applied within a minimum of 10 feet from the edge of any water body.²⁷ For the purposes of this section, water body includes, but is not limited to, creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District.

- 3.4.6 Mowing. Mowing in Common Areas and Managed Areas shall be done in accordance with the most current version of the Florida Green Industries

²⁷ Community Associations may wish to establish a buffer zone or low impact zone at a greater distance. Some local governments may have more restrictive ordinances. See TAMPA, FLA., CODE § 13-163 (2006).

BMPs handbook and by certified landscaping contractors as prescribed in Section 3.2. Homeowners are strongly encouraged to follow the suggested mowing recommendations in the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping. All landscaping contractors performing environmental landscaping services on a Homeowners property shall act in accordance with the most current version of the Florida Green Industries BMPs handbook and have a valid certification as prescribed in Section 3.2. Mowing adjacent to swales or water bodies shall be performed such that no clippings are deposited into any swales or water bodies.

3.4.7 Disposal of Landscape Material.

- (a) Turf Clippings. Unless the turf is diseased, turf clippings shall be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads shall be swept onto turf areas or composted. Turf clippings or landscape material shall not be deposited in any swales or water bodies.
- (b) Composting. The Committee shall not prohibit any Homeowner from installing compost bins on the Homeowner's private property. The Committee may regulate the aesthetics and siting of composting activities. Any person discarding any plant material shall follow all applicable state and local ordinances.

3.5 Water Conservation.

3.5.1 Irrigation Systems.

- (a) Installation & Design. All irrigation systems in the Development shall be installed according to the

state Standards for Landscape Irrigation in Florida and shall meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations shall, at a minimum, meet the state Standards for Landscape Irrigation in Florida. The irrigation system shall be designed so as to not overlap with water coverage zones, not to water impervious areas, and not to irrigate within three (3) feet of the building foundation. The irrigation design shall separate turf irrigation areas from landscape bed irrigation areas. All irrigation systems shall meet current Best Management Practices as established by the most current version of the Florida Green Industries BMPs handbook, including the uniform distribution of water throughout all zones.²⁸ Before and during construction, the designer of the Irrigation System shall approve in writing any changes to the irrigation design. A copy of the state Standards for Landscape Irrigation in Florida is attached and incorporated by this reference as attachment "B."

- (b) Maintenance. Irrigation systems shall be continuously maintained in working order so that the application rate of water to landscape and grass does not exceed the ability of the soil to absorb and retain water applied during one application. Homeowners shall comply with the requirements of this Article and shall maintain the irrigation systems within their Property boundaries. The Association shall within the Common Areas and Managed Areas, make monthly inspection of all automatic irrigation systems for operating defects, periodically calibrate all automatic irrigation systems, and seasonally reset the irrigation controllers or

²⁸ This sentence should refer to the most current version of the Florida Green Industries BMPs manual and not to a specific set of guidelines since new editions of the BMPs manual will eventually come out.

timers to account for changes in plant growth and local weather conditions. The irrigation system shall meet or exceed the rules of the State, the controlling Water Management District and the local government. If a Homeowner's irrigation system does not function properly, the Committee may correct this problem as provided under Section 3.1.5 above.

3.5.2 Rain Shut-off Devices or Soil Moisture Sensors.

- (a) Installation. Rain shut-off devices or soil moisture sensors shall be installed and operational for all in-ground irrigation systems. Rain shut-off devices shall be placed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.²⁹
- (b) Maintenance. The Association shall maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas. The Homeowners shall maintain the shut-off devices or soil moisture sensors within their property boundaries if such devices are not managed by the Association.

3.5.3 Homeowner Education. The Association shall create a Florida-Friendly educational package that includes, but is not limited to, a copy of the Association's CCRs as well as any other relevant water conservation and Florida-Friendly Landscaping information. The Association shall provide a copy of this educational package to all subsequent purchasers. The Association shall recommend that

Homeowners consult with local, county, or state FYN extension offices when appropriate.

3.5.4 The Association shall ensure that all subsequent purchasers receive a copy of the Irrigation Plan and Schedule and operating manuals, including any warranties, for the following:

- (a) irrigation systems,
- (b) rain shut-off devices,
- (c) soil moisture sensors, and
- (d) any other mechanical or electronic device implemented in the Irrigation Plan.

When a Homeowner sells their home, the Homeowner shall notify the Association of the transfer and the Association shall provide the new Homeowner with a copy of the operating manuals and any applicable warranties as stated above in this Exhibit. The Association may conduct an educational program on Florida-Friendly Landscaping to educate all Homeowners and Association members at least once a year.³⁰

3.6 Pest Control

3.6.1 Pesticide Application. Preventive³¹ blanket applications of pesticides are prohibited, except those performed as part of an IPM program in accordance with the most current version of the Florida Green Industries BMPs handbook or for termite prevention. All pesticide applications in Common Areas shall be done by a Certified Professional and in accordance with the most current version of the Florida Green Industries BMPs handbook. Homeowners are strongly encouraged to use alternative methods for controlling pest problems and to

²⁹ Pursuant to Fla. Stat. §373.62, any person who purchases and installs an automatic lawn sprinkler system after May 1, 1991, shall install, and must maintain and operate, a rain shut-off device or switch that will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

³⁰ This is strongly suggested to ensure Homeowner compliance with these Florida-Friendly CCRs and may be also done through an informational community website or bulletin board.

³¹ Preventative applications are those which are done regardless of whether there are pest problems or not. Blanket applications may be used when necessary to cure an existing pest problem.

follow the most current version of the Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping. However, all pest control companies servicing a Homeowner's property shall have valid state and county licenses, follow Integrated Pest Management as prescribed in the Florida Green Industries BMPs handbook, and have a valid certification as prescribed in Section 3.2.

3.7 Stormwater

- 3.7.1 Reserve Funds for the Stormwater Management System. _____ % of the initial working capital fund shall be set aside for maintenance and any future repair of the stormwater management system. The amount shall only be used to address issues relating to the stormwater management system.
- 3.7.2 Runoff. The Developer shall not divert roof or structure runoff to drain onto impervious surfaces.³² Homeowners shall not alter roof or structure drainage in any manner that channels runoff onto impervious surfaces³³ and shall comply with the local government, FDEP, and Water Management District requirements for stormwater management including proper erosion and sediment control.
- 3.7.3 Construction and Renovations. During the construction or renovation of a dwelling, the Homeowner or the Homeowner's builder shall control erosion and sedimentation during and after construction, stabilize cleared areas, limit stockpiles, protect stormwater inlets during construction, remove temporary control sys-

tems after construction, and limit the placement of gutters and drains.³⁴ The Homeowner's builder shall comply with the local government, FDEP, and Water Management District requirements for erosion and sediment control.³⁵ The Association shall not prohibit the following structures and activities including, but not limited to, cisterns, rain barrels, rain gardens, washing cars on lawns and other pervious surfaces, and the use of low-impact development (LID) designs including, but not limited to, curb cuts and swales. Where possible, all construction and renovation shall use LID designs and practices that reduce stormwater runoff. LID designs and practices that reduce stormwater runoff includes, but is not limited to, designs and practices creating curb cuts that direct the flow of runoff to depressional areas and designs and practices adding depressional areas such as rain gardens and swales, including pervious surfaces.

- 3.7.4 Stormwater Management Areas. Any stormwater systems managed by the Association shall follow all regulations or recommendations stipulated by local government, the local Water Management District, and any other applicable agency.³⁶
- 3.7.5 General Stormwater Pollution Prevention. The Association shall not prohibit the following structures and activities including, but not limited to, cisterns, rain barrels, rain gardens, washing cars on lawns and other pervious surfaces, and the use of LID designs including, but not limited to, curb cuts and swales. Where possible, the Association and the

³² Gainesville's current storm water management ordinance states impervious surfaces include but are not limited to driveways, parking lots, patios, decks, walkways, athletic courts, and other similar surfaces: See Ch. 27, Art. V, §27-237—Definitions.

³³ Allowing stormwater to drain onto the adjacent landscape reduces the amount of irrigation that is needed to sustain that landscape.

³⁴ Gainesville's development code ordinance on design standards lists precautions to control erosion and sedimentation problems: See Ch. 30, Art II, Subdivision II, 9 §30-27.

³⁵ See Gainesville Ordinance Ch. 30, Article VIII.

³⁶ In general, Water Management Districts do not allow homeowner associations to manage or maintain stormwater ponds unless the association applies for, and meets certain permit criteria. Water Management Districts prefer that local government stormwater utilities manage and maintain stormwater systems if the local government body is willing to take on the monitoring and maintenance of the stormwater pond: See F.A.C. Ch 40C-42.027(1)(2)(4). If an Association does take on the monitoring and maintenance of a stormwater system, then the Water Management District dictates guidelines for permit qualification and maintenance: See F.A.C Ch40C-42.027 and .029. Moreover, many Water management Districts set forth recommended language for covenants and restrictions concerning stormwater maintenance. See Appendix "A" "Recommended Language For Declaration of Covenants and Restrictions" available at <http://www.sjrwmd.com/programs/regulation/rules/pdfs/oprmaint.pdf>.

Homeowner shall use low-impact development (LID) designs and practices that reduce stormwater runoff. The Association and the Homeowners shall not sweep organic debris, such as leaves or grass, into storm drains or curbs. LID designs and practices that reduce stormwater runoff includes, but is not limited to, designs and practices creating curb cuts that direct the flow of runoff to depressional areas and designs and practices adding depressional areas such as rain gardens and swales, including pervious surfaces.

3.8 Pets and Wildlife [Optional]. This section applies to pets and to human treatment of all wild animals anywhere within the Development on both private and common property.³⁷

3.8.1 Pets. All pets shall be confined on a leash, held by and under the physical control of a responsible person at all times when they are outside a Property in the Development. Pets may not harass wildlife attracted to the Development. Pet owners shall pick up after their pets in the Development and appropriately dispose of such wastes in a trash receptacle. All local pet ordinances shall apply.

3.8.2 Hunting and Trapping. Hunting or trapping of any animal is prohibited.

3.8.3 Attracting and Taming Wildlife. Homeowners may not tame, acquire, keep, or confine any form of wildlife. Young or injured wild animals found or acquired cannot be kept or reared, and must be surrendered to a professional rehabilitative care center. Homeowners may attract wildlife by providing habitat that offers cover, water, and food for wildlife. Subject to limitations by the Association, Homeowners may provide the following habitats including native vegetation, bird feeders, nesting boxes, sheltering boxes, garden ponds, and bird baths. Artificial shelters and nesting boxes shall be maintained in good repair and not placed or distributed so

as to create conflicts by harboring non-native species or attracting wildlife in such numbers as to be in conflict with humans. Nest boxes shall be constructed so that they can be cleaned and disinfected at least annually. Garden ponds and birdbaths shall be maintained in good order to prevent the proliferation of noxious insects (such as mosquitoes), toxic blue-green algae, bacterial pathogens, or wildlife that could present a problem for people if present in such numbers or places where conflict would occur. Garden ponds and birdbaths shall also be designed child safe in order to prevent accidental drowning by children. For more information on these topics, Homeowners are encouraged to visit the University of Florida's Wildlife Extension Web site at <http://www.wec.ufl.edu/extension>.

3.8.4 Killing or Harming Wildlife. Wild animals shall not be purposefully injured. Under some conditions, aversive conditioning (training animals to avoid a conflict situation through the use of unpleasant stimuli) may be used as part of a nuisance control program but never in such a way as to cause or sustain suffering of the animal. Wild animals may be humanely killed to relieve their suffering due to critical injury or illness. The recommended means by which this should be accomplished is euthanasia administered according to veterinary medical standards as established by the American Veterinary Medical Association (AVMA) in their most current guidelines, or other guidelines that have been sanctioned by The Humane Society of the United States (HSUS). Situations of extreme emergency in which human safety or the immediate relief of animal suffering is at issue could warrant exceptions to this requirement. Control of commensal rodents (rats and mice) where federal, state, or local regulation and standards rule; where human health and safety concerns are threatened; and to limit the growth and spread of a population due to human

³⁷ Wildlife portions of this section have been taken from the Draft Community Covenants for Harmony, FL. HSUS/Wildlife.- © Harmony Institute 2001.

causes could also warrant exceptions to this requirement. Lethal control of commensal rodents may be conducted by homeowners or registered pesticide applicators, but must be done in strict accordance to Association guidelines and state laws. The use of glueboard traps under any circumstances is expressly prohibited.

3.8.5 Feeding Wildlife. Except as provided by Section 3.8.3 above, feeding wildlife is prohibited. Homeowners recognize that wildlife may be placed at risk by feeding that habituates animals to humans resulting in diminution of an animals' fear or normal caution around humans; by abnormally concentrating animals; by increasing risk of contact between wild animals, humans or pets, and other similar situations. Wildlife may not be indirectly fed by leaving food out for companion animals. Feeding must not lead to conflicts between animals and humans. The Association may recommend proper foods and feeding schedules. The Association may also suspend all bird feeding during any period of increased nuisance wildlife activity. Bird feeders should be limited in type and number. Feeders and human-supplied water sources, including birdbaths, shall be kept clean so that disease is not transmitted. Feeders should be protected from raiding by mammals such as raccoons.

3.8.6 Wildlife Conflicts. Resolutions to conflict between humans and wild animals shall first be attempted using non-lethal means, except under extreme and immediate circumstances where human safety or the safety of a companion animal is imminently threatened. Wildlife control, including non-lethal actions, shall not be conducted simply because a homeowner considers the mere presence of a wild animal to be a "pest" or "nuisance." The approach to wildlife conflict resolution shall follow a series of steps.

- (a) The conflict is identified,
- (b) The species causing it is determined and, if possible, the individual animal is identified,

- (c) Methods to resolve the conflict ranging from least to most invasive and injurious are identified, and
- (d) An action plan that ensures the least injurious and invasive approach suitable is evaluated and undertaken before other measures are considered.

Preferably, human-wildlife conflicts should be resolved by changing human practices (such as trash management and securing stored food), modifying habitats (changing plantings or managing landscapes), and/or structural modifications (fencing or other methods to exclude animals). Whenever practicable, the cause of human-wildlife conflict shall be sought and the conditions or circumstances that led to the conflict shall be removed.

3.8.7 Wildlife Management Plan for Controlling Wildlife Populations. Circumstances may arise where the community has evaluated a conflict situation and agreed to the need to intervene in and control a local population of wild animals (not merely an individual wild animal or small number of wild animals). Substantial and significant need must be demonstrated for human intervention to be considered, and regulations and guidelines established by the Florida Fish and Wildlife Conservation Commission shall be consulted. Alternatives to control including altering human practices (such as waste handling and landscaping) and methods to exclude or repel animals should be undertaken before control measures are considered. Control measures must be undertaken through a wildlife management plan that carefully evaluates the best methods for controlling the specific species of concern and seeks the most humane long-term solution. Plans that require multiple control measures should also include long-term strategies to prevent the recurrence of the need for control measures. Control measures may include humane animal capture and relocation to other natural habitats on the

property or as allowed by state permitting authorities, reproductive intervention (such as immunocontraception for mammals or egg addling for birds), and other measures reviewed and agreed to be humane by the Association.

- 3.8.8 Nests and Dens. Nests of native or migratory birds shall not be taken, moved or interfered with in any manner as stipulated under applicable state and federal law. No wild animal den or nest of unprotected bird species may be disturbed, moved, or altered except as part of a planned conflict abatement program (described under Wildlife Conflict or Controlling Wildlife Populations), or under compelling circumstances of human health, safety, or security needs. Young shall not be taken or moved from dens or nests but allowed to mature until they naturally disperse, except where the conditions listed above merit more urgent response. In these circumstances, the family integrity should be maintained by methods to prevent orphaning.

3.9 Wildfire Prevention [Optional].³⁸

- 3.9.1 Wildfire Prevention Committee. The Environmental Landscape Review Committee shall either act as a Wildfire Prevention Committee or shall appoint a separate Committee to carry out the wildfire prevention duties set forth in this Section.

3.9.2 General Duties of the Wildfire Prevention Committee.

- (a) Application to Become a FireWise Community.³⁹ Upon initial appointment by the Association, the Wildfire Prevention Committee shall contact a Fire-

Wise representative and apply to become a FireWise Community. If recognized, the Committee shall renew their status annually. If not recognized, the Committee shall address the recognized problems and shall submit a new application annually.

- (b) Wildfire Hazard Assessment of the Community. The Wildfire Prevention Committee shall employ a wildland/urban interface specialist, or a comparative professional, to complete a wildfire hazard assessment and use the assessment to create a Wildfire Hazard Plan that identifies locally agreed-upon solutions that the community can implement.
- (c) List of Recommended Trees and Shrubs. The Wildfire Prevention Committee shall maintain a list of recommended plants resistant to wildfires. Homeowners are strongly encouraged to select plants from this list when installing new flora within 30 feet of a structure.⁴⁰
- (d) Public Workshops. The Wildfire Prevention Committee shall hold a public workshop at least once a year to educate Homeowners about wildfires and preventative maintenance.
- (e) Educational Information. The Association shall provide wildfire prevention information to new and future Homeowners.

3.9.3 Fire-Wise Landscaping.

- (a) Landscaping by the Developer. The Developer shall install

³⁸ This Article is not necessary for communities in areas of Florida that are not prone to wildfires. The Division of Forestry (FDOF) maps areas prone to wildfires, see http://www.fl-dof.com/wildfire/wf_fras.html.

³⁹ Administered by the FDOF, Firewise Communities/USA is program in which communities help prevent losses due to wildland/urban interface fire through community education and preventative practices. To become a FireWise Community, a community or neighborhood must submit an application, available at <http://www.firewise.org/usa/>.

⁴⁰ A plant list is available from IFAS at hort.ufl.edu/fyn/list.pdf. or at <http://www.firewise.org/usa/>

landscaping that mitigates the chance of wildfires and shall avoid the use of fire-prone flora.

- (b) Replacement Landscaping. Any Homeowner replacing landscaping or installing new landscaping on private property shall consider the wildfire implications. Any new or replacement landscaping done in Common Areas and Managed Areas should be in accordance with the Wildfire Hazard Plan maintained by the Wildfire Prevention Committee.

3.9.4 Prescribed Burning. Before any prescribed burning, the Homeowner shall notify the Wildfire Prevention Committee and the Homeowner's neighbors. The Homeowner shall comply with federal, state, and local regulations, including obtaining a permit from the Florida Division of Forestry.

3.9.5 Preventative Maintenance by Homeowners. In addition to other preventive measures, Homeowners are encouraged to:

- (a) Keep trees and shrubs properly pruned,
- (b) Remove leaf clutter and dead branches if not used for mulching
- (c) Dispose or compost cuttings and debris properly and promptly, according to Association and government restrictions,
- (d) Store firewood away 30 feet away from the house,
- (e) Maintain the irrigation system,
- (f) Store and use flammable materials in a proper manner, and
- (g) Keep gutters clean of debris build-up.

4. ASSESSMENTS

4.1 Florida-Friendly Landscaping Capital Fund. The Declarant shall establish a Florida-Friendly Landscaping capital fund for the initial operation of the Committee by collecting a _____% of _____ or \$ _____ assessment from each Unit/Lot purchaser at the time of conveyance. Amounts paid into such fund shall not be refundable nor considered as advance payment of regular, special or individual assessments.

4.2 Resale Florida-Friendly Landscaping Capital Contribution. Subsequent to the initial sale of a Unit/Lot, upon the conveyance of a Unit/Lot from one person to another, the purchaser of the Unit/Lot shall pay to the Association a "Resale Florida-Friendly Landscaping Capital Contribution." This sum shall be used and applied as a working capital fund, and shall not be refundable or applied as a credit against the Unit Owner's payment of Assessments. The Board shall set the amount of the Resale Florida-Friendly Landscaping Capital Contribution from time to time, but the amount of the Resale Florida-Friendly Landscaping Capital Contribution shall be consistent for the Units/Lots in the Development.

5. AMENDMENT PROCEDURES.

The Association may amend the Florida-Friendly Landscaping Declaration at any time provided that changes are duly announced and posted _____ days in advance of the meeting, and two-thirds (2/3) of the Homeowners present at a duly-called meeting vote in favor of the proposed amendment. [Any amendment affecting the Stormwater Management System must have the prior approval of the _____ Water Management District or any applicable governmental entity.]

6. FINES FOR VIOLATION OF THE FLORIDA-FRIENDLY LANDSCAPING DECLARATION.

In the event of a violation of any covenant in this Declaration, the Declarant or Association may suspend the rights of the Homeowner to use Common Areas for a reasonable time. Upon giving a seven (7) day notice to the Homeowner, the Declarant or Association may also levy a rea-

sonable fine, not to exceed \$100 per day per violation (not to exceed \$1000 in the aggregate), against the Homeowner.

7. RIGHT OF ENTRY.

The Declarant or Association shall have the right to enter any portion of the Property, including the Homeowner's private property, for

the purposes of determining whether any maintenance is necessary or to ascertain Homeowner's compliance with this Declaration, so long as the entry is made at reasonable times and the Homeowner is given seven (7) days notice. In case of emergency, the Association shall have the right of entry for performing any maintenance or repair so long as a reasonable notice is given.

