

## Chapter 86 - FLOODS<sup>11</sup>

### Footnotes:

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**Editor's note**— Ord. No. 2009-3, § 1(Exh. A), adopted May 14, 2009, repealed the former Ch. 86, §§ 86-1—86-130, and enacted a new Ch. 86, §§ 86-1—86-128 as set out herein. The former Ch. 86 pertained to similar subject matter. See the Code Comparative Table for complete derivation.

**Cross reference**— Code enforcement, § 2-161 et seq.; buildings and building regulations, ch. 18; civil emergencies, ch. 26; environment, ch. 34; recreational vehicle and travel trailer parks, ch. 58; streets, sidewalks and certain public places, ch. 66; utilities, ch. 74; subdivisions, ch. 98; waterways, ch. 106; zoning, ch. 110.

## ARTICLE I. - IN GENERAL

### Sec. 86-1. - Statutory authorization.

The legislature of the state has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. (F.S. ch. 163)

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

### Sec. 86-2. - Findings of fact.

- (a) The flood hazard areas of the town are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief or impairment of the tax base, all of which may adversely affect the public health, safety and general welfare.
- (b) These flood losses may be caused by the cumulative effect of obstructions in areas of special flood hazards, which may increase flood heights and velocities and, when such obstructions are inadequately anchored, may result in damage to uses in other areas. Uses that are inadequately elevated or otherwise unprotected from flood damage may also contribute to the flood loss.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

### Sec. 86-3. - Statement of purpose.

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

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

- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-4. - Objectives.

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

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (9) To protect the limited amount of marine wetlands remaining in the community and those lands designated as conservation on the town land use map;
- (10) Qualify and maintain for participation in the National Flood Insurance Program.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Secs. 86-5—86-35. - Reserved.

ARTICLE II. - FLOOD HAZARD PROTECTION

DIVISION 1. - GENERALLY

Sec. 86-36. - Definitions.

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

*Addition (to an existing building)* means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any

walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

*Appeal* means a request for a review of the flood damage control administrator's interpretation of any section of this article or a request for a variance.

*Area of shallow flooding* means a designated AO or VO zone on the town's flood insurance rate map (FIRM) with base flood depths of from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

*Area of special flood hazard* means all land in the floodplain within the town subject to a one percent or greater chance of flooding in any given year (e.g., 100-year floodplain).

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year (e.g., 100-year floodplain).

*Basement* means that portion of a building being subgrade (below ground level) on all sides.

*Breakaway wall* means a wall that extends below the base flood elevation of a building, and is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portions of the building, the supporting foundation system, or other buildings.

*Breakaway wall or frangible wall as per FL State Statue Ch. 161* means a petition independent of supporting structural members that will withstand design wind forces, but will fail under hydrostatic, wave, and run-up forces associated with the design surge. Under such conditions, the wall will fail in a manner such that it dissolves or breaks up into components that will not act as potentially damaging missiles.

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

*Building permit* means a document issued by the town authorizing the permittee to engage in site development or construction activities on a given named project within the town.

*Coastal A-zone (CAZ)* is the area of special flood hazard landward of the coastal high hazard area (V-zone), in which the wave height on top of the one-percent still water elevation is up to three feet.

*Coastal high hazard area* means an area subject to high-velocity waters caused by but not limited to hurricane wave wash. The area is designated on a FIRM as zone VE or AE.

*Construction activities* means the doing of any work or the causing of any work to be done to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish any permanent or temporary building or structure or portion thereof or any other development of property, including but not limited to grading, filling, excavating, dredging and paving.

*Critical facility* means any structure or facility that produces, uses or stores highly volatile, flammable, explosive, toxic and/or water-reactive materials; or any hospital, nursing home or housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood; or any police station, fire station, vehicle and equipment storage facility, or emergency operation center that is needed for flood response activities before, during and after a flood. All critical facilities built after the date of the ordinance from which this chapter is derived shall be flood protected from damage and loss of access as a result of a 500-year flood or the flood of record, whichever is greater.

*Detention* shall mean the collection and temporary storage of stormwater in such a manner as to provide treatment through physical, chemical, or biological processes, with subsequent gradual release of the stormwater.

*Development* means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, and drilling operations or permanent storage of materials.

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

*Existing construction* means any structure for which the "start of construction" commenced before September 29, 1972.

*Fair market value* means the value of a building or structure, excluding the value of the land on which it is located, as determined by the county tax appraiser or by a certified property appraiser, before any substantial improvement is started or before the occurrence of any damage.

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

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

*Flood hazard boundary map (FHBM)* means an official map of the town, used by the Federal Emergency Management Agency, where boundaries of the areas of special flood hazard have been defined as zone A.

*Flood insurance rate map (FIRM)* means an official map of the town, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the town.

*Flood insurance study* means the official report provided by the Federal Emergency Management Agency. The report contains flood profiles and water surface elevation of the base flood, and includes the flood boundary-floodway map.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

*Floor:* See lowest floor.

*Freeboard* means height above the base flood elevation to provide an extra margin of protection to account for waves, debris, miscalculations, or lack of data.

*Functionally dependent facility* means a facility, which cannot be used for its intended purpose unless it is located or carried out in close proximity to the water, such as a docking, or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair or seafood processing facilities. The term does not include long-term storage, sales or service facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure* means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior; or
  - b. Directly by the Secretary of the Interior.

*Lowest floor* means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, elevator shafts, stair

enclosures or minor storage in an area other than a basement area is not considered a building's lowest floor. If such enclosure is not built to render the structure in violation of the applicable non-elevation design requirements of Title 44, CFR, Section 60.3 or this chapter, whichever is the more restrictive. Any floor containing:

- (1) A toilet, or similar sanitary plumbing fixture;
- (2) A sink or stationary tub equipped with a floor drain below the base flood elevation; shall be deemed a lowest floor. Any floor equipped for such uses as kitchen, bathroom, office, dining room, living room, family or recreation room, bedroom, professional studio or commercial occupancy shall be deemed a lowest floor.

*Mangrove stand* means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: black mangrove (*Avicennia nitida*); red mangrove (*Rhizophora mangel*); white mangrove (*Languncularia racemosa*); and buttonwood (*Conocarpus erecta*).

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. To be considered a vehicle and not a manufactured home, a travel trailer or park trailer would also have to meet the following criteria:

- (1) Be currently licensed as required for highway travel; and
- (2) Be highway-ready that is, be on its own wheels or internal jacking system and attached to its site only by quick-disconnect-type utilities connections commonly used in campgrounds and trailer parks. No permanent additions such as Florida rooms would be permitted.

*Manufactured home park or subdivision* means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale for which facilities are provided for servicing the lot such as utilities connection points, grading, concrete pads, streets or other facilities.

*Mean sea level (MSL)* means the average height of the sea for all stages of the tide. It is used as a reference for establishing varying elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD).

*Multipurpose structure* means any building, which is used or is designed to be used, simultaneously for both residential and nonresidential purposes. The residential portions of multipurpose buildings must comply with all requirements of this article pertaining to residential structures.

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

*New construction* means structures for which the start of construction commenced on or after the effective date of the ordinance from which this article derives.

*One hundred-year storm (rainfall)* is the amount of rainfall measured at certain location, during a specified length of time, which has a one percent chance in any given year of being equaled or exceeded. It is normal in Florida to experience many storms that locally equal or exceed rainfall defined as the 100-year storm. Many "100-year storms" occur somewhere in Florida in a typical year.

*Primary frontal dune* means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

*Residential structure* means any structure used or designed to be used for providing independent living facilities, for either temporary, transient or permanent occupancy, by one or more persons which

include but are not necessarily limited to sleeping accommodations and sanitary facilities. A residential structure also may contain noncommercial storage and recreational areas.

*Retention* shall mean the prevention of, or to prevent the discharge of, a given volume of stormwater runoff into surface waters by complete onsite storage.

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

*Start of construction* means the first placement of permanent construction of a structure, including a manufactured home, on a site, such as the pouring of slabs or footings, installation of piles, construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a site. This definition shall apply to all new construction, additions, substantial improvements, substantial damage, but does not apply to new construction or substantial improvement under the Coastal Barrier Resources Act, PL 97-3481.

*Stormwater* means the flow of water that results from and occurs immediately following a rainfall event.

*Structure* shall mean a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank or other manmade facilities or infrastructures. The term includes a building while in the course of construction, alteration or repair, but does not include materials or equipment stockpiles for such. For the purposes of this article, the terms "structure" and "building" shall be interchangeable.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition, in which the cumulative cost equals or exceeds 50 percent of the market value of the structure before the damaged occurred.

*Substantial improvement* means any combination of repairs, reconstruction, alteration, rehabilitation, addition, or other improvements to a building, taking place during the past ten-year period, in which the cumulative cost equals or exceeds 50 percent of the fair market value of the structure. For structures, which have sustained damage, the value shall be determined as of the time immediately before the damage occurred. As a further limitation, the term "substantial improvement" means and includes any addition, or combination or accumulation of additions, which increases the floor area of a structure by 50 percent, regardless of cost. Notwithstanding anything to the contrary, however, where the start of construction has preceded the filing of the application, the date for determining accumulation of costs and for determining value shall be the date immediately preceding the start of construction.

For the purpose of this definition, substantial improvement is started when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. However, the term does not include either any project for health, sanitary or safety code specifications, which are solely necessary to ensure safe living conditions or any alteration of a building, listed on the National Register of Historic Places or a state inventory of historic places.

*Twenty-five-year frequency.* The 25-year frequency, 24-hour duration storm event and post development runoff not exceeding the pre-development drainage rate shall be the established stormwater quantity level-of-service standard for the Town of Indian Shores. The town establishes a stormwater quality level-of-service standard consistent with Ch. 62-25, F.A.C.

*Variance* means a grant of relief from the requirements of this article, which permits construction in a manner that would otherwise be prohibited and where specific enforcement would result in unnecessary hardship.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Secs. 86-37—86-39. - Reserved.

Sec. 86-40. - Methods of reducing flood losses.

In order to accomplish its purpose and objectives, this article includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- (2) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters.
- (4) Controlling filling, grading, dredging and other development, which may increase, flood damage.
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.
- (6) Requiring that the local flood damage control administrator cause to have all public and private storm water retention/detention ponds in the town inspected on a semi-annual basis to determine compliance with subsections 34-112(1), (2), (3) and (10). Abatement procedure to be per section 34-116, section 34-117 and section 34-118

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-41. - Hazard mitigation strategies.

- (a) This article shall be amended and upgraded from time to time as required to stay current with all federal, state and county coastal construction code requirements.
- (b) Structures, which have incurred damage from a natural disaster event, where damages equals or exceed 50 percent of their assessed or appraised value, shall be rebuilt in compliance with all requirements of this article for new structures.
- (c) The town shall interrelate to hazard and non-hazard mitigation goals during reconstruction decision making, including the following objectives:
  - (1) Enhancement of local recreation and open space opportunities and of local beach accesses;
  - (2) Enhancement and restoration of local natural ecosystems;
  - (3) Reduction of traffic congestion, noise and other transportation-related problems;
  - (4) Enhancement of the long-term economic vitality of the local commercial base.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-42. - Lands to which article applies.

This article applies to all areas of special flood hazard within the jurisdiction of the Town of Indian Shores. (Note: All land areas within the Town of Indian Shores lie within an area of special flood hazard.)

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09); Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-43. - Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "Flood Insurance Study" for the town, dated September 3, 2003, with accompanying maps, other support data, and any revisions thereto, are adopted by reference and declared a part of this article. Current maps are numbered 12103C0176G, 12103C0177G and 12103C0179g. The flood insurance study is on file at the office of the town clerk, 19305 Gulf Boulevard, Indian Shores, Florida 33785.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-44. - Compliance.

No structure or land shall be located, constructed, extended, converted, improved or altered without full compliance with all of the requirements of this article and with the Federal Emergency Management Agency (FEMA) flood regulations.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-45. - Abrogation and greater restrictions.

This article is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions, or the coastal construction regulations as may be adopted or amended by the county or the state. If the provisions of any such statute, ordinance, easement, covenant or restriction shall overlap or conflict with this article, the more stringent restrictions or requirements shall prevail.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-46. - Interpretation.

In the interpretation and application of this article, all sections shall be:

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

This local law includes all revisions to the National Flood Insurance Program through October 1, 2007, and shall supersede all previous laws adopted for the purpose of flood damage prevention.

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-47. - Warning regarding area of special flood hazard designations.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Town of Indian



Shores or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made under this article.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-48. - Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a municipal ordinance violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than 60 days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. This chapter shall also be subject to enforcement by the Local Government Code Enforcement Boards Act, F.S. ch. 162, as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction. Nothing herein contained shall prevent the Town of Indian Shores from taking such other lawful actions as is necessary to prevent or remedy any violation.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Secs. 86-49—86-65. - Reserved.

## DIVISION 2. - ADMINISTRATION

Sec. 86-66. - Designation of flood damage control administrator.

The town planning, zoning and building committee is appointed the flood damage control administrator (local administrator) to administer and implement this article. The local administrator may delegate the responsibilities for the individual tasks contained in this article.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-67. - Duties and responsibilities of flood damage control administrator.

Duties of the flood damage control administrator shall include but not be limited to the following:

- (1) Review all building permit applications to determine that the permit requirements of this article have been satisfied.
- (2) Review all building permit applications to determine that all necessary federal, state or local governmental agency approvals, required prior to town approval, have been obtained and copies of such approvals are included with application.
- (3) Notify adjacent communities, the county department of environmental management and the state department of environmental resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Ensure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.

- (5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved buildings, in accordance with section article II, division 3.
- (6) In all areas of the Town of Indian Shores, certification shall be obtained from a registered professional engineer, architect that the building is designed and securely anchored to adequately anchored pilings, or columns in order to withstand velocity waters and hurricane wave wash.
- (7) Review plans for design and adequacy of breakaway walls in accordance with section 86-88(5).
- (8) When base flood elevation data and floodway data have not been provided in accordance with ordinance, then the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of article II, division 3.
- (9) *Interpretation of flood hazard boundary maps.* Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the flood damage control administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (10) Obtain written certification from a registered professional engineer or architect, that the proposed structure has been designed in compliance with the wind-loading requirements of the building code adopted in section 18-122 and is designed to be securely attached to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash associated with the base flood flow.
- (11) All records pertaining to the provision of this chapter shall be maintained in the office of the flood damage control administrator and shall be open for public inspection.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-68. - Requirements for building permit.

- (a) A building permit shall be obtained before construction or development begins within any area of special flood hazard established in section 86-43. An application for a building permit shall be made on forms approved by the flood damage control administrator and as prescribed by chapter 18, et seq. In addition to all other requirements of this Code, the following information is required as a part of the application for a building permit unless specifically waived by the chairperson of the town council's planning, zoning and building committee or authorized representative.
  - (1) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all structures.
  - (2) Description of the extent to which any watercourse will be altered or relocated because of proposed development.
  - (3) Certification of a registered professional engineer, architect that the building is designed and securely anchored to adequately anchored pilings, or columns in order to withstand velocity waters and hurricane wave wash.
  - (4) Plans for the design and adequacy of breakaway walls in accordance with section 86-88(5).
- (b) Provide a floor elevation certification after the lowest floor is completed, or instances where the building is subject to the regulations applicable to coastal high hazard areas, after placement of the horizontal structural members of the lowest floor, whichever is applicable, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered surveyor or professional engineer and certified by them. Any work undertaken prior to submission of the

certification shall be at the permit holder's risk. The building official shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop work order for the project.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-69. - Variances.

- (a) *Hearing of appeals.* Appeals and requests for variances from the requirements of this article shall be heard and decided in accordance with the provisions of both section 110-36 et seq. and this section. The board of adjustment and appeals shall hear and decide appeals and requests for variances from the requirements of this article and appeals for administrative review by any person who alleges that there is an error in any requirement, decision or determination made by the flood damage control administrator in the enforcement of this article.
- (b) *Considerations.* In hearing and deciding appeals and requests for variances from the requirements of this article, consideration shall be given to all technical evaluations, all relevant factors, standards specified in other sections of this article and the following:
  - (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger of life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect to such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the town;
  - (5) The necessity to the facility of a waterfront location, where applicable;
  - (6) The compatibility of the proposed use with existing and anticipated development;
  - (7) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
  - (8) The availability of alternative locations not subject to flooding or erosion damage for the proposed use;
  - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.
- (c) Upon consideration of the factors listed above, and the purposes of this chapter, the board of adjustment may attach such conditions to the granting of the variances, as it deems necessary to further the purposes of this chapter.
- (d) The flood damage control administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.
- (e) Variances shall not be issued within any regulatory floodway if any increase in flood levels would result during a base flood discharge.
- (f) *Criteria.*

- (1) Variances may be issued for the reconstruction, rehabilitation, restoration of structures listed on the National Register of Historic Places or the state inventory of historic places and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief and for a historical building a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
- (3) Variances shall only be issued upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense and will not create nuisances, cause fraud on or victimization of the public or conflict with the local government comprehensive plan or with other existing local laws or ordinances.
- (4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (5) *Appeal of decision.* Any person aggrieved by a decision of the board of adjustment and appeals may appeal such decision in the manner prescribed in section 110-81 et seq.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-70. - Required disclosure in contracts for sale of real estate.

In any contract for the sale of improved real estate located in the Town of Indian Shores, which is in a special flood hazard area, the seller shall include in the contract or a rider to the contract the following disclosure in not less than ten-point bold-faced type:

**THIS HOME OR STRUCTURE IS LOCATED IN A SPECIAL FLOOD HAZARD AREA. IF THIS HOME OR STRUCTURE IS BELOW THE APPLICABLE FLOOD ELEVATION LEVEL AND IS SUBSTANTIALLY DAMAGED OR SUBSTANTIALLY IMPROVED, AS DEFINED IN CHAPTER 86 OF THE TOWN OF INDIAN SHORES CODE OF ORDINANCES, IT MAY, AMONG OTHER THINGS, BE REQUIRED TO BE RAISED TO THE APPLICABLE FLOOD ELEVATION LEVEL.**

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-71. - Calculating substantial improvement and damage.

All improvements, modifications, and/or additions to all existing structures shall be calculated cumulatively for ten years from the date of the initial permit date. Additionally, all reconstruction and/or repairs to a damaged structure shall be calculated cumulatively for ten years from the date of the initial permit date.

- (1) *Substantial improvement.* Any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure taking place during a ten year period, the cost of which equals or exceeds 50 percent of the market value of the building before the "start of construction". This includes structures that have incurred "substantial damage". Regardless of the actual repair work performed:

- a. For the purposes of this section, the costs of improvements for a project shall be obtained from one of the following sources:
    - 1. Detailed cost estimate from the licensed general contractor of record; or
    - 2. Professional construction estimation software, such as Marshall and Swift or the Federal Emergency Management Agency's (FEMA) residential substantial damage estimation program.
  - b. For the purposes of this section, the following sources will be considered acceptable estimates of market value:
    - 1. An independent appraisal by a professional appraiser. The appraisal must exclude the value of the land and not use the "income capitalization approach" which bases value on the use of the property, not the structure.
    - 2. Detailed estimates of the structure's actual cash value. The replacement cost for a building, minus a depreciation percentage based on the age and condition.
    - 3. Property appraisals used for tax assessment purposes with an adjustment recommended by the Pinellas County Property Appraiser to reflect market conditions (adjusted assessed value).
  - c. For structures in which the substantial improvement percentage is greater than or equal to 40 percent, a more precise market value may be required.
- (2) *Substantial damage.* Damage to a structure of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition which equals or exceeds 50 percent of the market value of the structure before the damage occurred.
- a. Cost to repair a structure shall be calculated for full repair to the building before damage condition, even when the owner elects not to restore the building to its prior state. Cost to repair shall also include the cost of any improvement that the owner has opted to include during the repair project. For the purposes of this section, the cost to repair shall be obtained from one of the following objective third party sources:
    - 1. A licensed general contractor;
    - 2. Professional construction estimation software, such as Marshall and Swift or the Federal Emergency Management Agency's (FEMA) residential substantial damage estimation program;
    - 3. Insurance adjustment papers; or
    - 4. Damage assessment field surveys conducted by building inspection, emergency management or tax assessment agencies after a disaster.
  - b. Market value shall be calculated as set forth in division 2, above.
  - c. For structures in which the substantial damage percentage is greater than or equal to 40 percent, a more precise market value may be required.
- (3) *Tracking of substantial improvement and substantial damage, repairs and additions to existing structures.* Improvement value divided by building value equals percent improvement. Percent improvement accumulates over life of building. When during the ten-year period; the cost equals or exceeds 50 percent; building must be brought into conformance with the flood damage prevention requirements of this chapter.

Example:

$$\$20,000.00/\$100,000.00 = 20 \text{ percent improvement in 1990}$$

$$\$10,000.00/\$120,000.00 = 8 \text{ percent improvement in 1991}$$

\$28,600.00/\$130,000.00 = 22 percent improvement in 1999

Cumulative improvement from 1990 to 1999 = 50 percent of building value and building must be brought into conformance.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-2, §§ 1, 2, 5-10-11; Ord. No. 2011-4, § 1, 9-7-11)

Secs. 86-72—86-85. - Reserved.

### DIVISION 3. - STANDARDS FOR FLOOD HAZARD REDUCTION

Sec. 86-86. - General standards.

- (a) All areas of the Town of Indian Shores is a special flood hazard area, all development sites including new construction and substantial improvement shall be reasonable safe from flooding, and meet the following provisions:
- (1) The Town of Indian Shores hereby establishes a four-foot freeboard above the FEMA established base flood elevation.
  - (2) All new construction and substantial improvement shall be anchored to prevent flotation, collapse or lateral movement of the structure.
  - (3) All new construction and substantial improvement shall be constructed with materials and utility equipment resistant to flood damage.
  - (4) All new construction or substantial improvement shall be constructed by methods and practices that minimize flood damage.
  - (5) All utilities including the electrical, heating, ventilation, plumbing, air condition equipment, ducts etc. shall be elevated above the base flood level plus the four-foot freeboard.
  - (6) Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities including duct work, shall be designed and/or located to prevent floodwater from entering or accumulating within the components during conditions of flooding.
  - (7) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
  - (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
  - (9) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
  - (10) Any alteration, repair, construction or improvements to a building that is not in compliance with the provisions of this article, shall be undertaken only if said nonconformity is not furthered, extended or replaced.
  - (11) All applicable additional federal, state, and local permits shall be obtained and submitted to the flood damage control administrator with the application for development permit. Copies of such permits shall be maintained on file with the development permit. State permits may include, but not limited to, the following:
    - a. *Southwest Florida Water Management District*: In accordance with F.S. § 373.036(2)(a), Flood Protection and Floodplain Management;

- b. *Department of community affairs:* In accordance with F.S. § 380.05, areas of critical state concern, and F.S. ch. 553, pt. IV, Florida Building Code;
- c. *Department of health:* In accordance with F.S. § 381.0065, Onsite Sewage Treatment Disposal Systems; and
- d. *Department of environmental protection, coastal construction control line:* In accordance with F.S. § 161.053, Coastal Construction and Excavation.

(12) Adequate drainage is provided to reduce exposure to flood damage.

(13) All activities in the Town of Indian Shores that may be hazardous to public health or water quality are prohibited.

(14) All new development in the Town of Indian Shores is required to avoid or minimize disruption to shorelines, stream channels and their banks.

(15) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

(16) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces.

(b) *Subdivisions proposals.* All subdivision proposals shall be consistent with the need to minimize flood damage and shall comply with the requirements, standards and procedures for the subdividing of lands as specified in section 98-2.

(1) Such proposals shall be consistent with the need to minimize flood damage;

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

(3) Such proposals have adequate drainage provided to reduce exposure to flood hazards.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-2, § 1, 2-9-10; Ord. No. 2011-2, § 3, 5-10-11; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-87. - Construction requirements.

(a) No new construction or substantial improvement of any structure shall be permitted west or seaward of the coastal construction control line.

(b) The town shall not permit, support or finance any projects involving construction beyond the coastal construction control line (in V zone), such as but not limited to the following:

(1) New local transportation corridors or public roads.

(2) Sewer, water or utility line extension or expansion.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-88. - Specific standards.

All areas in the Town of Indian Shores are in a special flood hazard zone, where base flood elevation data has been provided by FEMA. The following provisions are required:

- (1) *Construction in floodways.* Areas within special flood hazard areas designated as floodways are extremely hazardous due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential. In these areas, the following shall apply:
  - a. All encroachments are prohibited, including fill, new construction, additions, and substantial improvement and other developments unless certification, with supporting technical data, by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.
  - b. All such construction shall comply with all applicable flood hazard reduction sections of this article.
  - c. Placement of manufactured homes, except in an existing manufactured home park or subdivision, is prohibited. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of subsection (1) of this section and the elevation standards of section 86-88 are met.
- (2) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, the bottom of the lowest horizontal structural member including basement, all utilities including the electrical, heating, ventilation, plumbing, and air condition equipment, ducts, etc. shall be elevated to or above base flood elevation plus four feet freeboard.
- (3) *Nonresidential construction.* Includes new construction or substantial improvement of any commercial, industrial or other nonresidential structure shall have the lowest floor, including basement all utilities including the electrical, heating, ventilation, plumbing, and air condition equipment, ducts, etc. shall be elevated to or above base flood elevation plus four feet freeboard.
- (4) All utilities including the electrical, heating, ventilation, plumbing, air condition equipment, ducts, etc., shall be elevated above the base flood level plus the four-foot freeboard.
- (5) All utilities including the electrical, heating, ventilation, plumbing, air condition equipment, ducts, etc. shall be elevated above the base flood level plus the four-foot freeboard.
  - a. The utility company's services to the building are exempted.
- (6) A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the building official.
  - a. All structures erected in the Town of Indian Shores, each of the following four design criteria must be met for new and substantially improved buildings that have enclosed areas below the BFE plus four feet freeboard as established by the Town of Indian Shores with openings designed and certified by a design professional:
    1. There must be a minimum of two openings on different sides of each enclosed area. If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to enter.
    2. The total area of all openings must be at least one square inch for each one square foot of enclosed area.
    3. The bottom of each opening can be no more than one foot above the adjacent grade.
    4. Any louvers, screens, or other opening covers must not block or impede the automatic flow of floodwaters into and out of the enclosed area.
    5. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).



- b. All structures erected in the Town of Indian Shores shall be designed to preclude finished living space below the BFE plus four feet freeboard as established by the Town of Indian Shores.
- c. All new buildings and structures erected in the Town of Indian Shores shall be constructed on foundations that are approved by a licensed professional engineer, supported on pilings and/or columns and adequately anchored to such supports to resist collapse and lateral movement from wind and velocity water pressures. Spread footings and fill shall not be used for structural support purposes. Foundations must be designed to transfer safely to the under-laying soil all loads due to wind, water, dead load, live load, and other loads, including uplift due to wind and water. These areas have special flood hazards associated with high-velocity waters from tidal surge and hurricane wave wash; therefore, the following provisions shall apply:
  - 1. All buildings or structures shall be located landwards of the reach of the mean high tide and east of the Coastal Construction Control Line.
  - 2. All buildings or structures shall be elevated so that the bottom of the lowest supporting member is located no lower than the base flood elevation plus four feet freeboard as established by the Town of Indian Shores. With all space below the lowest supporting member, open so as not to impede the flow of water, except for breakaway walls.
  - 3. All buildings or structures shall have an "as built survey" and an "elevation certificate" that verifies the elevation of the bottom of the lowest horizontal structural member."
  - 4. All buildings or structures shall be securely anchored on/to pilings to resist flotation, collapse and lateral movement due to effects of wind and water loads.
  - 5. Pilings or columns used as structural support shall be designed and anchored to withstand all applied loads of the base flood flow. Determining an appropriate embedment depth requires consideration of several factors; pile depth necessary to resist vertical, uplift, and horizontal loads; anticipated scour depth or elevation at the side; existing ground elevation; base flood elevation, etc.
  - 6. *Pile spacing.* The design ratio of pile spacing to pile diameter shall not be less than eight to one for individual piles; however this would not apply to pile clusters located below the design grade. The maximum center-to-center spacing of woodpiles shall not be more than 12 feet on center under load bearing sills, beams, or girders.
  - 7. *Pile embedment.* Pilings shall have adequate soil penetration (bearing capacity) to resist the combined wave and wind loads (lateral and uplift) acting simultaneously with typical structure (live and dead) loads, and shall include consideration of decreased resistance capacity caused by erosion of soil strata surrounding the piles. The minimum penetration for foundation piles is to an elevation of eight feet below mean sea level (msl) datum if the BFE is ten feet msl or less, or to at least ten feet below msl if the BFE is greater than ten feet msl. Additional guidance on pile embedment, including load embedment tables for different soil and pile types, is provided in the Coastal Construction Manual.
  - 8. *Column action.* Pile foundation analysis shall also include consideration of piles in column action from the bottom of the structure to the stable soil elevation of the site. To withstand wind and water forces, pilings bracing may be horizontal or diagonal.
  - 9. *Pile standards.* The minimum acceptable sizes for timber piles are a tip diameter of eight inches for round timber piles and eight by eight inches for timber piles. All woodpiles must be treated in accordance with requirements of AWPA-C3 to minimize decay and damage from fungus. Reinforced concrete piles shall be cast of concrete having a 28-day ultimate compressive strength of not less than 5,000 pounds per square inch, and shall be reinforced with a minimum of four longitudinal steel bars having a combined area of not less than one percent nor more than four percent of

the gross concrete area. Reinforcement for precast piles shall have a concrete cover of not less than one and one-quarter inches for No. 5 bars and smaller and not less than one and one-half inches for No. 6 through No. 11 bars. Reinforcement for piles cast in the field shall have a concrete cover of not less than two inches.

10. These values may be modified by a design professional registered with the State of Florida.
  11. There shall be no fill used as structural support.
- (7) Breakaway walls shall be allowed below the base flood elevation plus four feet. Provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:
- a. Not permit the infill walls themselves to become waterborne debris.
  - b. Not cause the accumulation of waterborne debris.
  - c. Design safe loading resistance of each wall shall be not less than ten nor more than 20 pounds per square foot. If more than, 20 pounds per square foot, a registered engineer or architect shall certify that the designed wall would collapse from result of a water load less than that, which would occur during the base flood event, and the elevated portion of the building and section supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event. Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equaled or exceeded in any given year.
  - d. Window openings shall be limited to the minimum required for light and ventilation (maximum of one-twentieth of the floor area served).
  - e. Walls shall be of flood resistant materials.
  - f. If breakaway walls are utilized, such enclosed space shall not be usable for human habitation but shall be designed to be usable only for parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises.
  - g. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the building department for approval.
- (8) Prohibit the placement of mobile homes, except in an existing mobile home park or existing mobile home subdivision.
- (9) Any alteration, repair, reconstruction or improvements to a structure started after the enactment of this article shall not enclose the space below the lowest horizontal structural member unless breakaway walls are used as provided in F.S. ch. 161 this area may not be used a habitable space.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Sec. 86-89. - Sand dunes and mangrove stands.

There shall be no alteration of sand dunes or mangrove stands, which would increase potential flood damage.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2011-4, § 1, 9-7-11)

Secs. 86-90—86-120. - Reserved.

## ARTICLE III. - STORMWATER MANAGEMENT

### Sec. 86-121. - Definitions.

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

*Absorption area* means any area, designed or natural, capable of allowing stormwater percolation.

*Building* means any structure built for the support, shelter or enclosure of persons, animals, chattels or property of any kind, which has enclosing walls for 50 percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof." For the purpose of this article, each portion of a building separated from other portions by a firewall shall be considered as a separate building.

*Building inspector* means the building inspector of the Town of Indian Shores or an agent of this Town of Indian Shores designated by the committee for the administration or enforcement of this article.

*Construction* shall mean any onsite activity that will result in the creation of a new stormwater management system, including the building, assembling, expansion, modification, or alteration of the existing contours of the property, the erection of buildings or other structures, or any part thereof, or land clearing.

*Construction permit* shall mean an SSM permit issued by the Town of Indian Shores to an entity with the legal ability to construct the stormwater management system in accordance with the system design and permit conditions.

*Control device* shall mean the element of a discharge structure that allows the gradual release of water under controlled conditions, sometimes referred to as bleed-down.

*Control elevation* shall mean the lowest elevation at which water can be released through the control device.

*Committee* means the planning, zoning and building committee of the council.

*Design storm* means a storm whose magnitude, rate, and intensity do not exceed the design load for a storm drainage system.

*Detention* refers to the collection and storage of surface water for subsequent controlled discharge at a rate, which is less than the rate of inflow.

*Developer* means any person engaged in any type of development of improved or unimproved land.

*Development* shall mean any of the following:

- (1) Construction, installation, alteration, demolition or removal of a structure, impervious surface, or stormwater management system; or
- (2) Clearing, scraping, grubbing, or otherwise removing or killing the vegetation of a site;
- (3) Adding, removing, exposing, excavating, leveling, grading, digging, dumping, or otherwise disturbing the soil or rock of a site in a manner that is contrary to the requirements of this article.

*Discharge structure* shall mean a structural device, usually constructed of a material such as concrete, metal, or plastic, through which water from a stormwater management system is discharged to a receiving water body.

*Drainage facility* means any component of the drainage system.

*Drainage system* means the system through which water flows from the land. It includes all watercourses, waterbodies and wetlands.

*Dry detention* shall mean water storage with the bottom elevation at least one foot above the control elevation. Sumps and other minor features may be at a lower elevation.

*Erosion* means the change caused by unrestricted flow of surface water which entrains or suspends particles of silt, soils, sand, or other materials.

*Flood* means the inundation of areas not ordinarily covered by water.

*Grading and land balancing* means the moving of earth or materials for the purpose of development or redevelopment or the temporary or permanent alteration of existing topography of the land.

*Impervious surface* means a surface, which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. The term includes most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar structures.

*Improved land* means land that has been altered from its natural state, including but not limited to grading, paving, drainage, installation of structures, etc., that ultimately increases the land's value to its owner or that has altered the original integrity of the land. The term improved shall not be construed to mean that such alteration provides any increase in value or benefit to the public.

*Lawful buildable area* means the area of a site, exclusive of easements, in which development can lawfully take place without variances.

*Municipal separate storm sewer system (MS4)*, as defined in Florida Administrative Code 62-624.200(8) means the separate storm sewer system <sup>1</sup> owned or operated by the town, or by any other town or county government, or by the Florida Department of Transportation for collecting, storing, and transporting stormwater. Such conveyances may include but are not limited to roads with stormwater systems, storm drains, catch basins, curbs, gutters, ditches, constructed channels, or ponds, and all other structure and devices appurtenant thereto. As used herein, unless otherwise specified, it shall mean that MS4 owned by the town.

*One hundred-year storm (rainfall) a 100-year storm* is the amount of rainfall measured at certain location, during a specified length of time, which has a one percent chance in any given year of being equaled or exceeded. It is normal in Florida to experience many storms that locally equal or exceed rainfall defined as the 100-year storm. Many "100-year storms" occur somewhere in Florida in a typical year.

*Owner* means the person in whom is vested the fee ownership, domination or title of property, i.e., the proprietor. This term may also include a tenant, if chargeable under his lease for the maintenance of the property, and any agent of the owner or tenant. Owner shall include a public entity when that entity has a right-of-way easement, interest or any ownership interest.

*Overflow elevation* shall mean the design elevation of a discharge structure at which, or below which, water is contained behind the outlet of the control device, except for that which leaks out, or bleeds out, through a control device down to the control elevation.

*Retention* shall mean the prevention of, or to prevent the discharge of, a given volume of stormwater runoff into surface waters by complete onsite storage.

*Sediment* means solid material, whether mineral or organic and, is in suspension, is being transported or has moved from its site of origin.

*Sedimentation facility* means any structure or area, which is designed to hold runoff water until suspended sediments have settled.

*Site* means any tract, lot or parcel or combination of tracts, lots or parcels of land which are in one ownership or are contiguous and in diverse ownership where development is to be performed as part of a unit, subdivision or project or which is site-planned as a whole.

*Soil conservation plan* shall mean a document prepared or approved by a local Soil and Water Conservation District Board organized pursuant to F.S. ch. 582, that outlines a system of management practices to control stormwater and soil erosion, reduce sediment loss, or protect receiving water quality on a specific parcel of property.

*Stormwater* shall mean the flow of water that results from and occurs immediately following a rainfall event.

*Stormwater management plan* shall mean a plan for receiving, handling, and transporting storm and surface-waters within the Town of Indian Shore's stormwater management system.

*Stormwater management system* shall include all natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable outlet location internal or external to the boundaries of the Town of Indian Shores. The stormwater management system includes all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities, whether public or private.

*Structure* means that which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts, joined together in some definite manner. The term "structure" shall be construed as if followed by the words "or part thereof."

*Surface water* shall mean water that finds its way to an open channel without infiltrating into the soil.

*Surface and stormwater management (SSM) permit* shall mean a construction or operation permit issued by the Town of Indian Shores in compliance with the provisions of this article.

*Subsurface drainage* means any approved method used as a vehicle to transmit water under the ground, including the use of subsurface conduits to drain surface water from the land surface.

*Swale* shall mean a natural or manmade trench that:

- (1) Has a top width-to-depth ratio of the cross section equal to or greater than six to one, or side slopes equal to or greater than three feet horizontal to one foot vertical; and
- (2) Contains contiguous areas of standing or flowing water only following a rainfall event, and
- (3) Is planted with or has stabilized vegetation suitable for soil stabilization, surface water treatment, and nutrient uptake; and
- (4) Is designed to take into account the soil erodibility, soil percolation, slope, slope length, and drainage area to prevent erosion and reduce pollutant concentration of any stormwater.

*Twenty-five-year storm* means the amount of rainfall, which equates to 3.6 inches for duration of one hour.

*Twenty-five-year frequency, 24-hour duration storm event and post development runoff not exceeding the pre-development drainage rate* shall be the established stormwater quantity level-of-service standard for the Town of Indian Shores. The town establishes stormwater quality level-of-service standard consistent with Ch. 62-25, F.A.C.

*Unimproved land* means the natural state of the land prior to being altered in any way so as to increase the land's value to its owner or change the natural contours or water flows of the land and including land that has been returned to its natural state.

*Vegetation* means all plant growth, especially trees, shrubs, vines, ferns, mosses and grasses.

*Water or community waters* means all water on or beneath the surface of the ground, or in the atmosphere. It includes the water in any watercourse, waterbody or drainage system. It also includes diffused surface water and water percolating, standing or flowing beneath the surface of the ground, as well as coastal waters.

*Waterbody* means any natural or artificial pond, lake, reservoir or other area which ordinarily or intermittently contains water and which has a discernible shoreline, but not including ponds that are constructed for detention, retention, or treatment of surface runoff.

*Watercourse* means any natural or artificial stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, street, roadway, swale or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

*Wet detention* shall mean water storage with the bottom elevation lower than one foot below the control elevation of the system.

*Wetland* means those areas where the soil is ordinarily saturated with water, or where wetlands vegetation, as designated by the state Department of Environmental Protection, is the dominant plant community.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-7, § 1, 10-12-10)

Sec. 86-122. - Violations and penalties.

- (a) It shall be unlawful for any person to commence or conduct an activity described in this article without an approved drainage plan. To deviate from an approved plan or to fail to maintain drainage facilities under that person's ownership or control so that the facilities can function in accordance with the design criteria in the approved drainage plan, and such person upon conviction shall be punished as provided in section 1-16. Such person shall be guilty of a separate offense for each day during which a violation of this article is committed or continues.
- (b) For the purposes of this article, it shall be conclusively presumed that a violation has occurred when one or more of the following conditions exist:
  - (1) Development, grading or land balancing, or other activity for which approval is required by this section has been undertaken without an approved permit or plan.
  - (2) Drainage facilities are not maintained properly in accordance with the conditions of an approved permit or plan.
  - (3) Ponds, swales, ditches, and other waterbodies and watercourses contained on a property, and which serve the purpose of either containing, detaining, settling, conveying or otherwise altering the flow of surface water constitutes a drainage facility as provided in subsection (2).

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-7, § 1, 10-12-10)

Sec. 86-123. - Compliance with article required.

Any development of a site, except as specified in section 86-125, shall conform to this article. If a new development involves over 20 percent of the lawful buildable area of a previously developed site, the entire site shall conform to this article as if the entire site has been developed. If a new development is on a previously undeveloped site, the entire site shall comply with this article, regardless of the percentage of development. Except that building permit applications within the Indian Shores Town Square Planning area need only be accompanied by an approved permit, or letter of "no objection", from the Southwest Florida Water Management District and/or other governmental agencies having jurisdiction over the proposed development. Additionally, the retrofitting requirements described previously in this paragraph shall not apply to development within the Indian Shores Town Square Planning area. However, this exemption from retrofitting does not exempt the development from any other jurisdictional requirements.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09)

Sec. 86-124. - Stormwater management plan required.

A stormwater management plan prepared by a Florida Licensed Professional engineer shall be required for all new projects, all substantial improvements, and renewal or rehabilitation projects. In accordance with this article, the stormwater management plan must be submitted with the application for a building permit. No development or grading and land balancing of any land, site or property may begin

until the committee has approved the building permit and the stormwater management plan, when required. Issuance of approval of the stormwater management plan is contingent upon the following:

- (1) All developments must prevent increases in the 100-year storm peaks.
- (2) The developer shall submit to the committee three copies of a stormwater management plan prepared by a Florida Licensed Professional Engineer licensed in the state.
- (3) The stormwater management plan shall provide an up-to-date survey of the proposed land to be developed, redeveloped or graded and land balanced showing the number and location of existing trees; adequate elevations or contours, based on town datum of one and two-tenths feet equaling mean sea level and showing a minimum grid detail of 50 feet, to determine the existing and proposed drainage patterns; proposed changes to topography and contours and all ditches, canals, streams and all other key topographic features located within or directly adjacent to or serving the land to be developed or cleared. The calculations for runoff, detention and pipe sizes shall be submitted. The committee may require such additional information as deemed necessary to determine if the plan meets the requirements of this article. The stormwater management plan shall also contain the following:
  - a. The name, address and telephone number of the owner and the developer. In addition, the legal description of the property shall be provided.
  - b. A plan for the control of erosion and sedimentation, which specifies in detail the type and location of control measures, the stage of development at which they will be put into place or used and provisions for the maintenance of them.
- (4) Submission of survey upon completion of the project, an as-built survey shall be submitted showing the location of all structures and all retention areas or other drainage facilities, together with sufficient elevations or contour lines to determine compliance with the drainage plan approved for the project. Sites requiring a Southwest Florida Water Management District (SWFWMD) permit shall provide an approved "license to operate" from the SWFWMD prior to issuance of a certificate of occupancy.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-7, § 1, 10-12-10)

**Editor's note**— Ord. No. 2010-7, § 1, adopted Oct. 12, 2010, changed the title of § 86-124 from "drainage plan required" to "stormwater management plan required." See also the Code Comparative Table.

Sec. 86-125. - Certain structures, types of construction exempt.

Minor additions to existing building, open porches, decks or minor enclosed additions not exceeding 15 percent of existing gross floor area and not exceeding 500 square feet gross area may be added to an existing building without providing the drainage plan required in subsection 86-124a. and with the provision that the total volume of runoff from the site shall not be increased by the addition.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09)

Sec. 86-126. - Control requirements for water runoff.

- (a) Drainage plans shall be approved only if they demonstrate that the proposed development or grading and land balancing has been planned and designed and will be constructed and maintained to meet the following standard: Any development or grading and land balancing specified in this article shall not be allowed to shed more stormwater onto adjacent right-of-way or property than was discharged from the site prior to the proposed development/redevelopment.

- (b) No drainage of water directly into the Intracoastal Waterway or Gulf of Mexico is allowed.
- (c) The difference between the volume of runoff, in cubic feet per second, calculated for the natural, unimproved state of the property and the volume calculated to occur after development is the volume of runoff for which an appropriate means of detention will have to be designed.
- (d) Adequate precautions shall be taken during all grading, filling, excavating, land balancing and construction phases of a project to prevent damage to or pollution of adjacent areas or waterways during or after construction as required by Southwest Florida Water Management District (SWFWMD) regulations. Surface cover vegetation lost during construction operations shall be replaced to minimize erosion and flood damage.
- (e) In addition to all other specifications and criteria contained in this article, all drainage plans for new projects or substantial improvements shall meet minimum criteria established by the county master drainage plan, as amended, and shall be approved by the SWFWMD and the Town of Indian Shores.
- (f) In planning all development and redevelopment of a site, every effort shall be made to protect and preserve the natural environment, the quality of adjacent waters, mangroves and other unique and irreplaceable species, dune systems, coastal vegetative communities or wildlife habitats and all species of flora and fauna listed in the coastal and conservation element of the current comprehensive plan as endangered, threatened or species of special concern, as defined and required by the State Endangered and Threatened Species Act of 1977 and the Federal Endangered Species Act of 1973.
- (g) No dredging or filling operations and no clearing of trees or wetland vegetation shall be permitted without first having obtained all required county, state and federal permits and approvals.
- (h) The following stormwater management techniques shall also be required by this section:
  - (1) Front, rear and side line swales for retention and stormwater conveyance shall be used wherever possible.
  - (2) The flood-carrying and flood-storage capacity of the 100-year floodplain shall be maintained.
  - (3) Expansion and regular maintenance of retention swales adjacent to town roadways are encouraged, wherever possible.
  - (4) Construction of drainage retention areas in the public right-of-way shall be considered by the town council if a public purpose is served.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-7, § 1, 10-12-10)

Sec. 86-127. - Water detention—Generally.

- (a) All proposed water detention areas shall be designed using the recommended criteria listed in this article, and the design calculation shall be submitted with the drainage plan. For calculation of volume required, minimum storm duration of two-hour 100-year storm shall be used. If the time of concentration exceeds one hour, the time of concentration shall be used.
- (b) All stormwater management systems water quality shall be evaluated based on their ability to prevent degradation of receiving waters and adverse impacts on the site's natural systems, their efficiency in removing pollutants, and their ability to conform to state water quality standards as established in Chapters 17-3 and 17-4 of the Florida Administrative Code.
- (c) Detention or retention treatment volume in the stormwater management system shall be provided for the first inch of runoff from the project site, including offsite areas draining to the system.
- (d) Detention areas shall be designed, where possible, so that they will be completely dry within 36 hours following rain. Drawdown may be accomplished by the use of under-drains or by percolation if



the soil conditions permit. Data supporting drawdown calculations (i.e., soil type, seasonal high water tables, tide conditions, etc.) shall be submitted to support the calculations.

- (e) Mosquito control. Drainage facilities that contain water continuously or more than 24 hours following rain shall be designed to the maximum extent possible to provide for the destruction of mosquito larvae.
- (f) Responsibility for installation of walls where any runoff of water from property in excess of the quantity calculated for the natural, unimproved condition of that property, which causes or is reasonably likely to cause, flooding of adjacent property, shall require the installation of retention walls by the owner of the property from which the runoff may occur.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-7, § 1, 10-12-10)

Sec. 86-128. - Same—Approved methods.

Design of proposed water detention areas shall be in accordance with the following best management practices and approved by the building official:

- (1) Detention ponds surface area, depth, bank slopes and outfall shall be designed according to site requirements.
- (2) Grass, loose rock or landscaped absorption areas surface area, configuration and type shall be designed according to site requirements and shall be subject to review by the building inspector and his approval. A percolation test to verify ground absorption capabilities may be required at the discretion of the building official.
- (3) Retention tank, dry well, subsurface drain or percolation facility length, size and depth of drainpipe, size and type filter material and overall size and location of facility shall be designed according to site requirements and shall be subject to the review and approval of the building official. A percolation test to verify ground absorption capabilities may be required at the discretion of the building official.
- (4) Vehicular use areas designed with restrictive stormwater inlets or restrictive pipe sizes. Parking areas shall be designed with sufficient detention areas to provide control of the volume of water runoff to conform to this section.
- (5) The retention system shall be designed to receive and retain the volume generated from the two-hour 100-year run-off event falling over the entire development including all rights-of-way, excluding off-site flows.

(Ord. No. 2009-3, § 1(Exh. A), 5-14-09; Ord. No. 2010-7, § 1, 10-12-10)

#### ARTICLE IV. - CONSTRUCTION SITE STORMWATER RUNOFF CONTROL

Sec. 86-129. - Title.

This part shall be known as the "Town of Indian Shores Construction Site Stormwater Runoff Control Ordinance" and may be so cited.

(Ord. No. 2010-7, § 2, 10-12-10)

Sec. 86-130. - Areas included.

This part shall apply to all incorporated areas within the legal boundaries of the town, as well as to any portion of the municipal separate storm sewer system (MS4) owned by another town or county, or the Florida Department of Transportation, that may exist within the corporate limits of the town.

(Ord. No. 2010-7, § 2, 10-12-10)

Sec. 86-131. - Construction and interpretation.

- (a) Where any provision of this part refers to another provision, ordinance, statute, policy, reference, manual, rule, regulation, or other authority, it refers to the most current version, incorporating any amendments thereto or redesignation thereof.
- (b) The standards set forth herein and promulgated pursuant to this part are minimum standards intended to minimize the offsite discharge of pollutants to the maximum extent practicable, therefore this part does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S., waters of the state, or the town's MS4. This part shall not create liability on the part of the town, or any agent or employee thereof for any damages that result from any person's reliance on this part or any administrative decision lawfully made hereunder.

(Ord. No. 2010-7, § 2, 10-12-10)

Sec. 86-132. - Definitions.

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

*Best management practices (BMP)* means any program, technology, process, siting criteria, operating method, or device employed to control, prevent, remove, or reduce discharges of soil and other pollutants to the MS4 or surrounding coastal waters. BMPs include but are not limited to: treatment facilities to remove pollutants from stormwater; operating and maintenance procedures; facility management practices to control runoff, spills or leaks of non-stormwater, waste disposal, and drainage from raw materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures and such provisions as the town determines appropriate and necessary for the control of pollutants including the improper lawn maintenance practice of blowing of grass clippings onto walks, streets and surface waters.

*Clean Water Act (CWA)* means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*Clearing* means any activity which results in exposure of soil to wind or rain, through removal of the vegetative surface cover, or removal of pavement or other structures from any construction site.

*Construction activities for purposes of this section* means any activities undertaken for the purpose of erecting structures, or otherwise altering the existing character of land, including but not limited to clearing, excavating, grading, stockpiling earth materials, paving, and placement or removal of earth material. Any activities which result in the temporary or permanent exposure of unvegetated land surface.

*Construction site* means any parcel of land, or portion thereof, or a contiguous combination thereof, where clearing, grading, or construction activities are performed as a single unified operation, regardless of size, upon which construction activities are undertaken.

*Discharge* for purposes of this section means any direct or indirect introduction of any solid, liquid or gaseous matter into the separate storm sewer system or to the coastal waters of the town. It includes, but is not limited to, any release, spilling, leaking, seeping, pouring, emitting, emptying, pumping, placing or dumping, of any substance or material.

*Erosion control* means BMPs or other measures that prevent erosion of exposed soils or sediments, or other exposed materials that may be subject to erosion.

*Erosion and runoff control plan* means a set of plans prepared by or under the direction of a licensed professional engineer which indicate the specific measures and sequencing to be used controlling sediment and erosion on a development site; before, during and after construction.

*Grading* means excavation or fill of material, or relocation of soil, resulting in a change in topography or the exposure of unvegetated soil.

*Illicit discharge* means any discharge or addition to any MS4 system or private stormwater system, Intracoastal Waterway, or the Gulf of Mexico, that is not composed entirely of stormwater except discharges pursuant to an NPDES permit, or authorized by a town permit, or other discharges specifically identified as authorized exceptions pursuant to the town stormwater pollution control ordinance section 90-103 of this Code. Any discharge in violation of a NPDES or town permit shall constitute an illicit discharge.

*Inspection* includes, but is not limited to, any on-site physical examination of all facilities and grounds, and all construction activities thereupon, or a review of all records on operation and maintenance of facilities and the results of any monitoring performed, for compliance with local, state, and federal regulations and permit conditions.

*Municipal separate storm sewer system (MS4)*, as defined in Florida Administrative Code 62-624.200(8) means the separate storm sewer system owned or operated by the town, or by any other town or county government, or by the Florida Department of Transportation for collecting, storing, and transporting stormwater. Such conveyances may include but are not limited to roads with stormwater systems, storm drains, catch basins, curbs, gutters, ditches, constructed channels, or ponds. As used herein, unless otherwise specified, it shall mean that MS4 owned by the town.

*National Pollutant Discharge Elimination System (NPDES)* means the federal water pollution control program authorized by the Clean Water Act, and by the provisions of F.S. § 403.0885, and applicable rules of the Florida Administrative Code pursuant to the state's federally-approved NPDES program.

*NPDES permit* means general, group, and individual discharge permits issued by the U.S. Environmental Protection Agency pursuant to Sections 307, 402, 318, or 405 of the Clean Water Act, or by the state pursuant to the state's federally-approved NPDES regulatory program and applicable rules of the Florida Administrative Code.

Unless otherwise specified, as used herein it shall mean the Generic Permit for Discharge of Stormwater from Phase II Municipal Separate Storm Sewer Systems issued by the state to the town pursuant to Section 62-621.300(7)(a), F.A.C.

*Operator or site operator* means the person in responsible charge of construction activities at a construction site.

*Owner* for purposes of this section means the owner of a building or land, and shall include any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such building or land.

*Perimeter control* means a barrier that prevents sediment or other materials from leaving a site or entering any surface water or MS4, either by filtering sediment-laden runoff, or by diverting it to a sediment trap or basin, or by any other means.

*Person* means any individual or group of individuals, and shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well.

*Phasing* means clearing a parcel of land, or construction upon a parcel of land, in distinct phases, with the stabilization of each phase before the clearing of the next.

*Pollutant* means anything that causes or contributes to pollution as defined in F.S. § 403.031(7).

*Qualified inspector* means anyone having received specialized training from an erosion and sedimentation control training course acceptable to the town, or having experience or knowledge in erosion and sediment control measures and practices acceptable to the town.

*Sediment control* means measures that are intended to prevent eroded sediments or other erodible material from leaving a construction site.

*Site* unless otherwise specified means a construction site.

*Stabilization* means the seeding or sodding of exposed land, or the use of any other practices acceptable to the town that prevent exposed soil from eroding.

*Start of construction* for purposes of this section means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for footings, piers or foundations; excavation of ponds, vaults, culverts, or other purposes; erection of temporary forms; and installation of accessory buildings such as garages.

*State* means the State of Florida.

*Stormwater* for purposes of this section means any surface runoff and drainage from land surfaces, including the surfaces of buildings and other hardened surfaces on the land, consisting entirely of water from rainfall events.

*Surface water* for purposes of this section means all bodies of water existing or flowing upon the land surface, whether natural or manmade, including, but not limited to ponds, lakes, streams, canals, ditches, swales, wetlands, bays, the Intercoastal Waterway, or the Gulf of Mexico.

*Waters of the state* means waters within the State of Florida that are defined as such in F.S. § 403.031.

*Waters of the United States* means surface waters and other water bodies as defined at 40 CFR § 122.2. or any amendment thereto, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry stormwater at and during all times and seasons.

(Ord. No. 2010-7, § 2, 10-12-10)

Sec. 86-133. - Permit requirements.

(a) *General conditions.*

- (1) Discharges to the town's MS4 shall be controlled so that they do not impair the operation of the town's MS4 or contribute to the failure of the town's MS4 to meet any applicable local, state, or federal law or regulation, or singly or in combination with other discharges cause a violation of state water quality standards in the MS4.
- (2) Stormwater from construction sites shall be controlled onsite using BMPs to protect water quality to the maximum extent practicable prior to discharge to the town's MS4 or to surrounding coastal waters.
- (3) The owners or operators of construction sites that will discharge stormwater to the town's MS4 or adjacent coastal waters must provide to the town written notification and obtain approval in the form of a site permit development prior to start of construction.
- (4) Any person responsible for illicit discharges determined by the town to be contributing to the degradation of any MS4 system, private property, Intracoastal Waterway, or the Gulf of Mexico, either directly or indirectly, shall provide corrective measures in accordance with a schedule approved by the town and may be subject to paying fines and damages pursuant to the town stormwater pollution control ordinance section 90-103 of this Code.

(b) *Municipal and state permits.*

- (1) Any person proposing to engage in construction activity shall file an erosion and runoff control plan with the town, as follows:
    - a. For construction activity greater than a single family residential site, or for a commercial site, the erosion and runoff control plan must be submitted to the town along with an application for site development permit.
    - b. For construction sites less than one acre of land, instructions for a short-form erosion plan will be provided by the town, and must be satisfactorily completed and submitted to the town prior to permit approval.
  - (2) Any person proposing to engage in construction activity which disturbs one acre of land or greater, or is part of a construction activity that will disturb one acre of land or greater is required to obtain coverage under the FDEP Generic Permit for Stormwater Discharge from Construction Activities That Disturb One or More Acre of Land; pursuant to Section 62-621.300(4)(a), Florida Administrative Code, and shall submit proof of coverage to the town prior to the town's site development approval.
  - (3) Any person who holds a NPDES permit which authorizes stormwater discharge to the town's MS4 shall provide proof of such stormwater discharge permit to the town prior to beginning discharge, but not later than 60 calendar days after the effective date of this part or 60 calendar days after issuance of the permit.
  - (4) Any person proposing to engage in construction activities that require coverage from FDEP or the Southwest Florida Water Management District Stormwater Discharge or Environmental Resource Permit (ERP), shall obtain such coverage as required by state or district regulations. Permit coverage must be obtained, and proof of such permit coverage shall be submitted to the town, prior to the commencement of any land clearing or construction activities.
- (c) *Erosion and runoff control plan.*
- (1) Prior to the approval of any construction or land clearing activities, the permitted site operators shall prepare and submit an erosion and runoff control plan to the town. This plan shall be consistent with requirements of FDEP, the Southwest Florida Water Management District, all erosion and sedimentation control regulations of the town, and the stormwater pollution prevention plan (SWPPP) prepared for the site pursuant to Section 62-621.300(4)(a), Florida Administrative Code.
  - (2) The erosion and runoff control plan shall include, at the minimum:
    - a. A natural resources map identifying soils, surface waters, wetlands, forest cover, and resources protected under other rules, ordinances or laws of the town and/or the state.
    - b. A statement providing the "nature of activity" and the "sequence of construction" of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the phasing of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.
    - c. All erosion and sediment control measures and BMPs necessary to meet the objectives of this part throughout all phases of construction and permanently, after completion of development of the site. BMPs proposed for use must be consistent with criteria set forth in the most recent version of the Florida Development Manual, Chapter 6 Stormwater and Erosion and Sediment Control (Florida Department of Environmental Protection) or the EPA document Storm Water Management for Construction Activities (EPA 832-R-92-005 September 1992). Measurable goals for each BMP must be defined in the plan.
    - d. Provisions for containment or protection of construction-related materials and wastes temporarily stored on the site, including discarded building materials, concrete truck

washout, chemicals, litter and sanitary waste, and other materials subject to solution or entrainment in runoff.

- e. Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime or fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
- f. Provisions for ongoing maintenance and inspection of control facilities, including easements.
- g. Measures that would be implemented in the event of discharge of sand or soils, or other materials, into the MS4 or roadways.
- h. Measures that would be implemented in the event of the discharge or release of any harmful chemical, petroleum product, or toxic substance which may have an adverse impact to water quality in any onsite or offsite surface or ground waters, or which may threaten or endanger public health or safety. Reporting requirements for such discharges or releases is provided in 40 CFR 117 and 302, or any amendment thereto.
- i. Procedures to receive and respond to information regarding construction activities submitted by the general public.

(3) Contractor and subcontractor certification.

- a. The erosion and runoff control plan must clearly identify, for each measure identified in the plan, any contractor and/or subcontractor that will implement the measure.
- b. All contractors and subcontractors identified in an erosion and runoff control plan in accordance with this part shall sign a copy of the following certification statement before conducting any activities at the site:

"I certify under penalty of law that I understand, and shall comply with, the terms and conditions of this Erosion and Runoff Control Plan."

The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; and the date the certification is made.

All certifications must be included in the erosion and runoff control plan. In the event of subsequent change of any contractor or subcontractor, the new contractor or subcontractor shall sign the certification, and such certification must be submitted to the town, and included in the erosion and runoff control plan.

- (4) The operator shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or an MS4, and which has not otherwise been addressed in the plan. The operator shall also amend the plan if it proves to be ineffective in eliminating or significantly minimizing pollutant discharges, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharge associated with construction activity. Significant amendments to the erosion and runoff control plan shall be submitted to the town and shall be processed and approved, or disapproved, in the same manner as the original plans prior to implementing any changes in procedures established by the plan.
- (5) Grading, erosion control practices, sediment control practices, and stabilization practices shall meet the design criteria set forth in the most recent version of the Florida Development Manual (Florida Department of Environmental Protection), or the EPA document Storm Water Management for Construction Activities (EPA 832-R-92-005 September 1992) and shall be adequate to prevent transportation of sediments or other pollutants from the site to the satisfaction of the town.
- (6) Clearing and grading shall be conducted in accordance with the following requirements:

- a. Clearing and grading of natural resources, such as trees or wetlands, shall not be permitted, except when in compliance all other applicable rules of the town and state.
  - b. Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the Florida Development Manual shall be used wherever possible to the satisfaction of the town.
  - c. Clearing, except that necessary to establish sediment control devices pursuant to the approved site development plan, shall not begin until all sediment control devices and BMPs have been installed and have been stabilized.
  - d. Cut and fill slopes shall be no greater than 2:1, except as approved by the town to meet other community or environmental objectives.
- (7) Erosion and sedimentation control procedures shall be employed in accordance with the following requirements:
- a. Soil stabilization measures must be initiated within seven days of clearing or inactivity in construction of any disturbed area.
  - b. If vegetative erosion control methods, such as seeding, have not become established within 60 days, the town may require that the site be reseeded or sodded, or that a nonvegetative option be employed.
  - c. Sand and/or soil stockpiles must be stabilized, controlled, or covered at the end of each workday.
  - d. Techniques that divert upland runoff past disturbed slopes shall be employed until the slopes have become stabilized.
- (8) Sediment controls shall be employed in accordance with the following requirements:
- a. Sediment controls shall be provided in the form of settling basins or sediment traps as needed, and perimeter controls will be properly installed prior to the commencement of clearing or construction.
  - b. Adjacent properties shall be protected by the use of a vegetated buffer strip when practical, in combination with perimeter controls.
- (9) Provisions must be made in the Erosion and Runoff Control Plan for containment of construction-related materials and wastes temporarily stored on the site; they must be stored and maintained in a manner to prevent discharge into surface waters or the town's MS4, or onto adjacent properties.
- These materials may include but are not limited to unused or discarded building materials, stockpiled soil or sand, concrete truck washout, fertilizers, chemicals, solvents, petroleum products, litter, debris, sanitary waste, or any other materials which may be dissolved in or transported by stormwater, or blown from the site by wind.
- (10) Construction site access.
- a. A temporary road for access to the site shall be provided at stages of development.
  - b. Stabilization measures in the form of gravel or other measures described in the Florida Development Manual or the EPA document Storm Water Management for Construction Activities are required at the construction entrance in order to ensure that soil is not tracked onto public roads by construction vehicles, or washed from the site by runoff.
  - c. Stabilization measures at the construction entrance shall be satisfactorily provided before commencement of clearing of the site.

(Ord. No. 2010-7, § 2, 10-12-10)

Sec. 86-134. - Inspections.

- (a) The town shall conduct inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the site operator where the work fails to comply with the erosion and runoff control plan as approved. Plans for grading, stripping, excavating, and filling work previously approved by the town shall be maintained at the site during the progress of the work.
- (b) The permittee, owner, site operator or their authorized agent(s) shall make regular inspections of all erosion and runoff control measures and BMPs in accordance with the inspection schedule outlined on the approved erosion and runoff control plan(s). These inspections shall be conducted weekly and after any 0.5-inch rain event, by a qualified inspector as herein defined. The purpose of such inspections will be to determine the overall effectiveness of the control plan, the condition of the BMPs, and the need for additional control measures. All inspections shall be documented in written form, signed by the inspector, and maintained onsite for review by the town.
- (c) When inspections disclose failure or imminent failure of erosion and sediment controls, measures shall be taken by the operator to restore, repair or replace such controls, and the measures shall be documented in written form, and signed by the operator on the inspection report.
- (d) Failure or imminent failure of perimeter controls shall be corrected before continuation of work at the site.
- (e) The town shall be allowed to enter the site as deemed necessary to make regular inspections to ensure implementation of the submitted plan, and control of offsite sedimentation and polluted runoff.

(Ord. No. 2010-7, § 2, 10-12-10)

Sec. 86-135. - Enforcement.

- (a) *Stop-work order; revocation of permit.*
  - (1) In the event that any person holding a town site development permit pursuant to this part violates the terms of the permit, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the town or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the town, the town may suspend or revoke the site development permit.
  - (2) Any action that results in impairment to the operation of the town's MS4 or that causes pollution of surface waters shall be considered detrimental to the public welfare and injurious to the property of the town.
- (b) *General violations.*
  - (1) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this or any other town ordinance. Failure to comply with the requirements of this part or any permit or approval granted or authorized under this part shall be punished as provided in section 86-48 of this Code.
  - (2) In addition to the penalties provided in section 86-48 of this Code, the town council may institute any appropriate action or proceeding, including suit for injunctive relief, in order to prevent or abate violations of this part. The town council may also institute proceedings to impose and recover damages or civil penalties in a court of competent jurisdiction for each violation of this part. If a violation of this part is continued, each day of such violation shall constitute a separate offense.

(Ord. No. 2010-7, § 2, 10-12-10)