

This is a DRAFT document.

Revised 2013

FPL Model Ordinance Book

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INTRODUCTION

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

This book is a compilation of multiple guidelines and model ordinances to promote Florida-Friendly Landscaping™ principles in local government Land Development Regulations (LDRs), model ordinances, and model covenants for developments that wish to comply with the principles of Florida-Friendly Landscaping.

The first model ordinance guideline is a revision of a 2003 FDEP-led effort to create model ordinance language for use by communities in Florida. It represents FDEP's preference for addressing nonpoint sources of pollution from lawns and landscapes in a comprehensive manner with a strong focus on source controls and education; that is, to prevent stormwater from being polluted in the first place, or to treat it on the site where it is first generated, using low-impact development principles and Best Management Practices.

It is comprehensive in that it not only addresses pre-construction issues, protective riparian buffers, etc.; but also includes language applicable to fertilizer management and landscape maintenance practices and training; irrigation design and installation, and maintenance and contractor regulation; and pet waste handling and disposal. It is called a guideline, because it is not in itself a comprehensive landscape ordinance addressing public safety and aesthetic issues as are covered in a true landscaping code, but rather addresses water quality and conservation issues.

The second model ordinance is a stand-alone subset of the fertilization sections of the first ordinance. It was formally recognized by the Legislature in 2009 in s. 403.9337 Fla. Statutes, and is mandated as a minimum standard for communities in nutrient-impaired watersheds. It is much more limited than the comprehensive guidelines, addressing only the application of lawn and landscape fertilization, maintenance and applicator training, which only addresses one important component of the issues associated with stormwater nutrients from urban landscapes. This model has been adapted from a draft model ordinance written by the legislatively appointed Consumer Fertilizer Task Force in 2007. The main focus is on the training and professionalism of professional fertilizer applicators.

A third section addresses pet waste disposal ordinance language. Pet wastes provide a source of both nutrient and bacterial pollution to urban stormwater.

The fourth section concerns landscape irrigation. Development of the FDEP Model Ordinance for irrigation contracting and maintenance was mandated by changes to

s.373.62 Florida Statutes in 2009 also. This ordinance provides penalties for those who do not properly maintain rain sensors or other shutoff devices for periods when adequate soil moisture is present. Florida-Friendly Landscape design and irrigation requirements per s. 373.228 Florida Statutes are also presented here.

Finally, the last section of the booklet addresses the private contract provisions typically found in deed restrictions, subdivision covenants, and other restrictions used by developers and homeowners associations. This document was produced in cooperation with the University of Florida Levin College of Law, and was extensively updated following the revisions to s. 373.185, 720.3075, and several other sections of Florida law in 2009 which forbid and invalidated prohibitions on Florida-Friendly Landscaping in ordinances and private CCRs.

DRAFT

COMPREHENSIVE

DRAFT

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

Last Accepted changes 1/4/13 Draft 8/28/2013 11:50 AM

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

As of the date of publication, the implementation of this language is not mandated by any state or federal law. Communities have been encouraged, however, by Sections 125.568, 166.048, 373.185, 373.228, 373.4595, 373.62, 403.067, 403.9336 and 403.9337 Florida Statutes, to consider adopting Florida-Friendly ordinances. In addition, certain fertilizer provisions are mandated by Section 403.9337, F.S. for the growing number of communities with nutrient-impaired water bodies. The costs of treating nonpoint source pollution provide another incentive to adopt these provisions. This document is an educational tool for those communities seeking advice on preparing this type of ordinance. It also addresses issues of nonpoint source pollution not addressed by many water conservation or fertilizer-only ordinances. Other model ordinances exist and should be consulted, and a full evaluation of how various provisions might mesh with existing codes is necessary. Most communities will find some features apply to land development codes; others apply to occupational licensing, or nuisance ordinances, etc. It is not, nor does it purport to be a comprehensive landscape ordinance.

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

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

Since that time many other individuals and organizations have provided additional comments and insight as the document has been periodically updated.

FLORIDA-FRIENDLY LANDSCAPING™
GUIDELINES FOR
MODEL ORDINANCE LANGUAGE
FOR PROTECTION OF WATER QUALITY AND QUANTITY

Revised 2013

[Green text is guidance commentary only. Purple text is optional.]

Comment [MT1]: The Program is FFL, The Title is based on the 2003 version. It is guidance only and is not a comprehensive landscape ordinance.

1. TITLE

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

Comment [MT2]: Green text is guidance commentary only. Purple text is optional.

2. FINDINGS OF FACT

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

WHEREAS, pursuant to Sections 125.568, 166.048, 373.185, 373.228, 373.62, 403.9336 and 403.9337 F.S., local governments should consider the adoption of Florida-Friendly landscape ordinances; and

WHEREAS Section 403.9337, F.S. mandates that those local governments within certain watershed ordinance adopt an ordinance on Florida-Friendly fertilizer use; and

WHEREAS, Section 373.62 F.S. encourages adoption of an ordinance regulating irrigation contractors; and

WHEREAS, pet wastes may be a source of nutrient and bacterial pollutants; and

WHEREAS, local governments must use the standards and guidelines developed pursuant to Section 373.228(4), F.S., (see *Landscape Irrigation and Florida-Friendly Design Standards*, December 2006, as amended) when developing landscape irrigation system and Florida-Friendly landscaping ordinances ; and

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

WHEREAS, the (LOCAL GOVERNMENT) recognizes the need for the protection of water as a natural resource through the application of Florida-Friendly Landscaping™ practices; and

WHEREAS, Florida-Friendly Landscaping™ promotes the conservation of water by the use of site adapted plants and efficient landscape irrigation systems and watering practices, which may, in turn, result in long-term reductions in the use of fertilizers, pesticides, energy, maintenance, and the associated costs; and

WHEREAS, Florida-Friendly Landscaping™ practices and designs may save significant amounts of water to preserve local water supplies such that cumulative benefits may reduce or postpone the need for community potable water supply expansion; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE (LOCAL GOVERNMENT), FLORIDA, as follows:

3. SHORT TITLE

Comment [MT3]: Required by Florida Board of Landscape Architecture in 2003 to avoid an implication of promoting unlicensed Practice of Landscape Architecture.

Comment [MT4]: Several of these sections are optional for inclusion in an ordinance. Since this is an educational model, not a mandatory ordinance, the educational value will be retained.

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

4. AUTHORITY

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

5. ADMINISTRATIVE STANDARDS

Whenever, in the course of administration and enforcement of this ordinance, it is necessary and desirable to make any administrative decision, then, unless other standards are in this Ordinance, the decision shall be made so that the result will not be contrary to the spirit and purpose of this ordinance or injurious to the surrounding neighborhood or the community at large.

6. PURPOSE AND INTENT

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

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

Comment [MT5]: Limited, LID aspects related to landscaping and FFL principles, water infiltration, avoiding compaction, etc.

These guidelines and landscape practices are established to help communities, developers,

builders, contractors, businesses and homeowners to be partners in improving and protecting Florida's environment.

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

This ordinance is based on concepts of Florida-Friendly Landscaping™ and the use of BMPs. The Florida-Friendly Landscaping™ concept is based on the principles originally espoused by the *Florida Yards and Neighborhoods* (FYN) and *Environmental Landscape Management* (ELM) programs operated by the University of Florida Cooperative Extension Service, along with the various water conservation programs of the State's Water Management Districts, and BMPs identified in the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* (2008). Other pollution prevention programs and low impact development concepts have also been incorporated into this model ordinance.

The *Florida Yards & Neighborhoods Handbook*, FDEP's *Waterfront Property Owners Guide*, and the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries* should be referred to before making landscape and other site decisions. In general, all landscapes shall be designed to minimize adverse effects on Florida's natural systems. A Model Springs Protection Code was developed by agencies and other stakeholders that includes specific Land Development Regulation recommendations that promote Low Impact Design. This Model Code is available as Chapter 5 in *Protecting Florida's Springs: An Implementation Guidebook*. It is available at <http://www.dep.state.fl.us/geology/geologictopics/springs.htm>. Further information is available at <http://fyn.ifas.ufl.edu>.

Comment [MT6]: The AFFN book could not be located and local WMD publications are district specific. The ITPF book is a national publication 373.183 FS specifies the FFL program as the official Florida program.

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

Comment [MT7]: [Swf] def.?

This ordinance incorporates several accepted principles of Florida-Friendly Landscaping™. These principles, give guidance and direction for the administration and enforcement of the regulations contained herein. Detailed explanations of the following topics are included in the previously cited documents.

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

Comment [MT8]: [swf] Consistent w/ new FFL or redo as topics?

In addition to Florida-Friendly Landscaping™ design and maintenance practices, this Ordinance regulates the proper installation and maintenance of efficient landscape irrigation systems, the use of fertilizers by any applicator, and establishes training and licensing requirements for Commercial and Institutional Fertilizer Applicators. A major objective of this ordinance is to reduce the misuse of irrigation systems and fertilizers, and the ordinance is fully compliant with Sections 403.9337, 373.62, and 373.228 Florida Statutes. It also establishes a prohibited application period when fertilizer must not be applied and specifies allowable fertilizer application rates and methods, fertilizer-free zones, low maintenance zones, and exemptions. The Ordinance also requires the use of Best Management Practices and other measures which provide specific management guidelines to minimize negative secondary and cumulative environmental effects associated with improper irrigation and the pet wastes deposited on urban landscapes. These secondary and cumulative effects have been observed in and on (LOCAL GOVERNMENT)'s natural and constructed stormwater and drainage conveyances, rivers, creeks, canals, springs, lakes, estuaries and other water bodies. [Guidance: as appropriate] Collectively, these water bodies are an asset critical to the environmental, recreational, cultural and economic well-being of (LOCAL GOVERNMENT) residents and the health of the public. Overgrowth of algae and vegetation hinder the effectiveness of flood attenuation provided by natural and constructed stormwater and drainage conveyances. Regulation of nutrients, including both phosphorus and nitrogen contained in fertilizer, will help improve and maintain water and habitat quality. Municipalities are also requested to ensure that urban pet wastes deposited in the landscape are properly addressed.

[Guidance: Florida Statutes 125.568(3), 166.048(3), 373.185(3), 720.3075(4), and others provide that "a local ordinance, deed may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-Friendly Landscaping™ on his or her land restriction or covenant or create any requirement or limitation in conflict with any provision of part II of this chapter {373} or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to Chapter 373 part II."]

Comment [MT9]: Revised per 2009 SB 2080.

7. APPLICABILITY

The provisions of this ordinance shall apply to the development, redevelopment, rehabilitation, and maintenance of all property within present or future incorporated areas of the (City/County of _____) which are subject to the provisions of Chapter _____, Site Plan Review; Chapter _____, Planned Unit Developments; or Chapter _____, Subdivisions and Plats of the (LOCAL GOVERNMENT of _____), Land Development Code.

[Guidance: If adopted by a county, unincorporated areas should also be included where they are subject to development.]

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

All LOCAL GOVERNMENT facilities will be managed in accordance with these practices within one year of the enactment of this ordinance. All LOCAL GOVERNMENT landscape service contractors will adhere to the Florida-Friendly practices cited in this ordinance. All new bid specifications and contracts will reflect this requirement beginning one year after the approval of this regulation. *[Guidance: Existing facilities/sites may not have been designed to maximize Florida-Friendly practices, but should be managed insofar as is practicable using these principles.]*

All new and renovated LOCAL GOVERNMENT facility landscapes will be designed in accordance with these principles and be constructed and installed using Florida-Friendly landscaping materials.

Comment [MT10]: [swf] define?

Section 10. H of this ordinance shall be applicable to and shall regulate any and all applicators of fertilizer and areas of application of fertilizer within the area of (MUNICIPALITY / COUNTY), unless such applicator is specifically exempted by the terms of this Ordinance from the regulatory provisions of this Ordinance. This Ordinance shall be prospective only, and shall not impair any existing contracts *[Guidance as regards fertilizer provisions: In 403.9336, the Legislature further finds that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level. Local government may adopt additional or more stringent provisions to the model ordinance as provided in subsection 403.9337(2). However, the local government should consider the disadvantages of confusing jurisdictional differences and should clearly demonstrate they meet the required criteria:*

(2) Each county and municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to s. 403.067, shall, at a minimum, adopt the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. A local government may adopt additional or more stringent standards than the model ordinance if the following criteria are met:

(a) The local government has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science based, and economically and technically feasible, that additional or more stringent standards than the model ordinance are necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body.

Comment [MT11]: Revised per 2009 SB494.

(b) The local government documents that it has considered all relevant scientific information, including input from the department, the institute, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation. All documentation must become part of the public record before adoption of the additional or more stringent criteria.]

Section 10. J of this ordinance shall apply to all licensed contractors within the jurisdiction of (Municipality/County) who install or perform work on automatic irrigation systems, and to any person who purchases, installs or operates an automatic landscape irrigation system on their property. **[Guidance: per s373.62. Local government may adopt additional or more stringent provisions to the model ordinance.]**

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

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

- All new, redeveloped, or rehabilitated landscapes for public agency projects and private development projects including but not limited to industrial, commercial, residential, and recreation projects, including new single-family and two-family homes;

[Guidance: Local governments may set a reasonable threshold to trigger certain provisions for

existing developments or structures. For instance, an irrigation system requiring less than 50% repair or renovation may only have to meet standards on the new portion, but 50% or greater may require the entire system be brought up to standards.]

[Guidance: Florida Statutes 125.568(3), 166.048(3), 373.185(3), 720.3075(4), and others provide that “a local ordinance, deed restriction or covenant may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-Friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of this chapter {373} or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to Chapter 373 part II.”]

Comment [MT12]: Revised per 2009 SB 2080.

- Developer-installed landscapes at entrances into and common areas of single-family and multi-family projects;
- Any development approved prior to the effective date of this ordinance if the governing site development plan is amended;

8. EXEMPTIONS

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

- Bona-fide agricultural activities as defined in the Florida Right to Farm Act, Section 823.14, Florida Statutes.
- Other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock.
- Any lands used for scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.
- Any development that is governed by an approved, final site development plan or a valid building permit issued prior to the effective date of this ordinance is exempted from retrofitting or meeting the specific provisions of Sections 10. A-F. However, existing development is not exempted from those provisions affecting management, maintenance, or

the education of maintenance personnel.

- Rights-of-way for public utilities, including electrical transmission and distribution lines, and natural gas pipelines.
- Conditional exemption may be granted by (to be inserted by local government) for individual projects if the applicant can demonstrate acceptable reasons for the requested exemption.

9. DEFINITIONS

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

All words used in the present tense include the future; all words in the singular number include the plural and the plural the singular. Any word or term not interpreted or defined by this section shall be used with a common dictionary meaning of common or standard utilization.

1. **“Administrator”** means the (LOCAL GOVERNMENT) Administrator, or an administrative official of (LOCAL GOVERNMENT) government designated by the (LOCAL GOVERNMENT) Administrator to administer and enforce the provisions of this Article.
2. **“Application”** or **“Apply”** means the actual physical deposit of fertilizer to turf or landscape plants.
3. **“Applicator”** means any Person who applies fertilizer on turf and/or landscape plants in (MUNICIPALITY / COUNTY).
4. **“Aquascape”** means the planting of aquatic and wetland plants within stormwater systems or natural water bodies.
5. **“Automatic Controller”** means a mechanical or electronic device, capable of automated operation of valve stations to set the time, duration and frequency of a water application.

6. **“Board” or “Governing Board”** means the Board of Commissioners of (LOCAL GOVERNMENT), Florida.
7. **“Best Management Practices”** means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.
8. **“Bubblers or Micro-bubblers”** means a type of emitter that may be classified as microirrigation or as conventional irrigation based upon their flow rate. Caution should be used in selecting this equipment due to the wide range of flow rates. Bubblers less than 60 GPH are considered micro-bubblers. All other bubblers must be zoned separately from conventional microirrigation zones.
9. **“Building”** includes the word "structure".
10. **“City” or “County”** shall mean the (LOCAL GOVERNMENT) of the State of Florida
11. **“Code Enforcement Officer”, “Official”, or “Inspector”** means any designated employee or agent of (MUNICIPALITY / COUNTY) whose duty it is to enforce codes and ordinances enacted by (LOCAL GOVERNMENT).
12. **“Commercial Fertilizer Applicator”** means, except as provided in subsection 403.1562(9) Fla. Stat., any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.
13. **“Constant Pressure/Flow Control”** means a device that maintains a constant flow, or pressure, or both.
14. **“Council” or “Commission”** shall mean Council or Commission of the (LOCAL GOVERNMENT).
15. **“Developed landscape area”** means that portion of the property where pre-development vegetation is to be removed.
16. **“Emitter”** means devices that are used to control the discharge of irrigation water that is discharged from lateral pipes or tubing. This term is primarily used to refer to devices used in microirrigation systems.

Comment [MT13]: Rev. per SB 494

17. **“Evapotranspiration-based (ET) controller”** means a controller that calculates soil moisture from known weather and related inputs. An ET-based controller:
 - a. Receives and monitors weather data or on-site environmental conditions that may include, but is not limited to, solar radiation, wind speed, temperature, relative humidity, rainfall, and soil moisture characteristics; and
 - b. Calculates or determines the amount of moisture input to and moisture lost from the soil and plants; and
 - c. Automatically creates or adjusts the irrigation schedule to apply only the amount of water that is necessary to maintain adequate soil moisture.

18. **“Fertilize,” “Fertilizing,” or “Fertilization”** means the act of applying fertilizer to turf, specialized turf, or a landscape plant.

19. **“Fertilizer”** means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. For the purposes of this ordinance, the term “fertilizer” does not include unmanipulated vegetable manures, peat, or compost which make no claims as described in the preceding sentence.

20. **“Filter”** means a device in an irrigation distribution system that removes sediment or other foreign matter from the water.

21. **“Florida-Friendly Landscape”** means a quality landscape that conserves water, protects the environment, is adaptable to local conditions, and is drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance. [Ref. s373.185 (1) Fla. Stat.]

22. **“Florida-Friendly Landscaping™”** means the service-marked educational program of the University of Florida Institute of Food and Agricultural Sciences Extension Service, created and delivered in partnership with the Florida Department of Environmental Protection to promote and train people in the principles of designing, installing, and maintaining a Florida-Friendly Landscape as defined in Florida law, especially as it concerns protection of natural resources and water conservation.

23. **“Ground Cover”** Means low growing plants, other than turfgrass, used to cover the soil and form a continuous, low mass of foliage.

Comment [MT14]: [swf / ifas] use 576.011 FS exclusion in def? or should animal manure be included but peat and vegetable compost excluded?

24. **“Guaranteed Analysis”** means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a Fertilizer.
25. **“Hardscape”** means areas such as patios, decks, driveways, paths and sidewalks that are not included is the irrigation system design area.
26. **“High volume irrigation”** means an irrigation system with a minimum flow rate per emitter of more than 60 GPH or higher than 1.0 GPM. High volume irrigation emitter flow rates are usually measured in GPM.
27. **“High Water Use Plants”** means plants that require irrigation to provide supplemental water on a regular basis, in addition to natural rainfall, or are so identified by a regulatory agency having jurisdiction. When placed in a naturally high water table area appropriate to the plant such that irrigation is not normally required, such plants shall not be considered high water use for the purposes of this ordinance.
28. **“Hydrozone”** means a distinct grouping of plants with similar water needs and climatic requirements.
29. **“Infiltration Rate”** means the rate of water entry into the soil expressed as a depth of water per unit of time (inches per hour)
30. **“Institutional Applicator”** means any Person, other than a non-commercial or commercial Applicator (unless such definitions also apply under the circumstances), that applies Fertilizer for the purpose of maintaining Turf and/or Landscape Plants. Institutional Applicators shall include, but shall not be limited to, owners, managers and employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.
31. **“Irrigated landscape area”** means all outdoor areas that require a permanent irrigation system.
32. **“Irrigation System”** means a constructed watering system designed to transport and distribute water to plants.
33. **“Irrigation Zone”** means a grouping of sprinkler heads or microirrigation emitters operated simultaneously by the control of one valve.
34. **“Landscape”** means any combination of living plants (such as grass, ground cover, shrubs, vines, hedges, or trees) and non-living landscape material (such as rocks, pebbles, sand, mulch, walls,

Comment [MT15]: [swf]

fences, or decorative paving materials).

35. **“Landscape Construction Documents”** means construction documents that may include a planting plan, a landscape layout plan, an irrigation plan, a grading and drainage plan, detail sheets and written specifications. Plans shall be numbered, dated, North arrow indicated, scaled, and sealed by an appropriately licensed professional where required by Florida Statutes Chapter 481, Part II.
36. **“Landscape Design”** means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for placement of tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.
37. **“Landscape Layout Plan”** means plans and drawings showing the location of buildings, structures, pedestrian, transportation, or environmental systems, and the detail for placement of site amenities, accessibility components, plantings and other tangible objects. Plans shall be numbered, dated, North arrow indicated, scaled, and sealed by an appropriately licensed professional where required by Florida Statutes Chapter 481, Part II.
38. **“Landscape Plant”** means any native or exotic (non-native) tree, shrub, herbaceous annual or perennial, fern or groundcover (excluding turf).
39. **“Landscaped Area”** means the entire parcel; less the building footprint, driveways, hardscapes, and non-porous areas. Water features are included in the calculation of the landscaped area.
40. **“Licensed Contractor”** shall mean any person licensed or registered under chapter 489, Florida Statutes, or authorized under any county or municipal license or tax certificate to design, install, repair, maintain, or adjust a landscape irrigation system within the jurisdiction of (Municipality/County).
41. **“Low-flow Point Applicators”** means irrigation applicators with output less than 60 gallons per hour (gph). Also called microirrigation emitters or drip irrigation emitters.
42. **“Low Maintenance Zone”** means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.
43. **“Low Water Use Plants”** means plants that do not need supplemental water beyond natural

Comment [MT16]: [swf]

Comment [MT17]: Questionable if this is legal. Language for Irrigation model Ordinance.

Comment [MT18]: 60 GPH or less. Florida Natural Resources Conservation Service, Conservation Practice Standard, Irrigation System, Microirrigation, Code 441

Comment [MT19]: [swf/ifas0]

rainfall, or are so identified by a regulatory agency having jurisdiction.

44. **“Microclimate”** Means the climate of a specific area in the landscape that has substantially differing sun exposure, temperature, or wind, than surrounding areas or the area as a whole.
45. **“Microirrigation”** (low volume) The application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes (laterals). Microirrigation encompasses a number of methods or concepts including drip, subsurface, micro-bubbler, and spray irrigation, previously referred to as trickle irrigation, low volume, or low flow irrigation. Also see low-flow point applicators.
46. **“Moderate Water Use Plants”** means plants that need supplemental water during seasonal dry periods.
47. **“Moisture Sensing Device”** means a device to estimate or measure soil moisture in the root zone for the purpose of controlling an irrigation system based on the actual needs of the plant. By law (373.62 F.S.) any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture. See: Rain Sensor, Soil Moisture Sensor, ET controller.
48. **“Mulch”** means non-living, organic or synthetic materials customarily used in landscape design to retard erosion and retain moisture.
49. **“Person”** includes a firm, corporation, county, municipal corporation, or natural person.
50. **“(LOCAL GOVERNMENT) Approved Best Management Practices Training Program”** means a training program approved per 403.9338 F.S., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection’s “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008,” as revised, and approved by the (LOCAL GOVERNMENT) Administrator. *[Guidance: 482.1562F.S., Limited certification for urban landscape commercial fertilizer application. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified under this section. The BMP training certificate or approved (FDEP and UF/IFAS) equivalent is mandatory to obtain the FDACS certificate. The adopting entity must define levels of required training for this program. Institutional and commercial applicators require a certificate of completion, which requires passing the written test, others, however, may require only attendance at the training, or records of in-house training, such as for laborers that may be illiterate and do not handle fertilizers or other agrichemicals.]*

Comment [MT20]: [swf / ifas] The device indicates the moisture in the root zone, however the device need not be located there.

Comment [MT21]: This reflects provisions for minimum training to obtain the FDACS LCFAC. Additional local testing may not be required of LCFAC holders.

51. **“Native Vegetation.”** means any plant species with a geographic distribution indigenous to all, or part, of the State of Florida as identified in: Wunderlin, R. P. 1998. *Guide to the Vascular Plants of Florida*. University Press of Florida, Gainesville.
52. **“Occupied”** shall be deemed to include the words "arranged", "designed", or "intended to be occupied".
53. **“Person”** means any natural Person, business, corporation, Limited Liability Company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.
54. **“Pervious Paving Materials”** means a porous asphaltic, concrete or other surface and a high-void aggregate base which allows for rapid infiltration and temporary storage of rain on, or runoff delivered to, paved surfaces.
55. **“Plant Bed”** means a grouping of trees, shrubs, ground covers, perennials or annuals growing together in a defined area devoid of turfgrass, normally using mulch around the plants.
56. **“Plant Communities”** means an association of native plants that are dominated by one or more prominent species, or a characteristic physical attribute.
57. **“Planting Plan”** means specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials.
58. **“Point of Connection (POC)”** means the location where an irrigation system is connected to a water supply.
59. **“Pop-up Sprays”** means a spray heads that pop up with water pressure and provide a continuous spray pattern throughout a given arc of operation.
60. **“Pressure Tank”** means a pressurized holding tank for irrigation water coming from wells to minimize cycling of the water pump.
61. **“Prohibited Application Period”** means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of (LOCAL GOVERNMENT), issued by the National Weather Service, or if

heavy rain¹ is likely.

62. **“Pump Cycling”** means an irrigation pump coming on and shutting off frequently during operation of an irrigation system.
63. **“Rain Sensor”** means a low voltage electrical or mechanical component placed in the circuitry of an automatic landscape irrigation system that is designed to restrict operation of a sprinkler controller when precipitation has reached a pre-set quantity.
64. **“Runoff”** means the water that results from and occurs following a rain event, or following an irrigation event, because the water is not absorbed by the soil or landscape and flows from the area.
65. **“Shall”** is mandatory.
66. **“Site Appropriate Plant”** means a plant that after establishment, will thrive within the environmental conditions that are normal for a specific location without artificial supplements such as irrigation.
67. **“Slow Release,” “Controlled Release,” “Timed Release,” “Slowly Available,” or “Water Insoluble Nitrogen”** means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.
68. **“Sod,” or “Lawn”** means a piece of turf-covered soil held together by the roots of the turf.
69. **“Soil Moisture Sensor”** means a soil-based device that assesses the available plant soil moisture in order to minimize the unnecessary use of water and optimize the effectiveness of an irrigation system.
70. **“Soil Texture”** means the classification of soil based on the percentage of sand, silt, and clay in the soil.
71. **“Turf and/or Turfgrass”** means a mat layer of monocotyledonous plants such as, but not limited

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

to, Bahia, Bermuda, Centipede, Paspalum, St. Augustine, and Zoysia.

72. "Used" shall be deemed to include the words "arranged", "designed", or "intended to be used".

73. "Valve" means a device used to control the flow of water in the irrigation system.

74. "Water Use Zone" See "Hydrozone".

10. GENERAL PROVISIONS AND DESIGN STANDARDS.

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

Florida-Friendly Landscape Design Standards:

1. Low impact site design practices, such as preserving existing native trees and vegetation, shall be used if feasible. Where established natural vegetation is incorporated into the landscape design, irrigation of those areas shall not be required.
2. The plant palette and irrigation system shall be appropriate for site conditions, taking into account that, in some cases, soil improvement can enhance water use efficiency.
3. Plants shall be grouped together by irrigation demand.
4. The percentage of landscaped area in irrigated high water use hydrozones should be minimized. Local government ordinances shall address the percentage of irrigated landscaped area that may be included in high water use hydrozones. These high water use limits should not apply to landscaped areas requiring large amounts of turf for their primary functions, e.g., ballfields and playgrounds.

When the construction upon or the development of a new site or the redevelopment, reconstruction, upgrading, expansion or change in use of a previously developed site is such that site plan review by the (to be inserted by the Local Government) is required prior to the issuance of a building permit, the provisions of 10A-F of this ordinance shall be applied to newly disturbed areas of such site. **[Guidance: It is intended that for expansion or remodeling of existing sites, only new or modified areas would be subject to these provisions.]**

A. Site Planning and Design

1. Site designs and landscape construction documents shall be prepared in accordance with the requirements of all applicable Florida Statutes. All landscape and irrigation system designs shall be consistent with the standards required under 373.228 Florida Statutes.
2. Site Plans for new development shall include riparian buffers adjoining all waters of the state. Such buffers should be native, or if previously disturbed, constructed in accordance with USDA-NRCS conservation practices. Riparian buffers shall be at least 25 feet, and preferably 50-150 feet wide to protect water bodies from nonpoint source pollution generated by up gradient development. Riparian buffers shall be designed and managed in accordance with USDA-NRCS conservation practices for riparian buffers and filter strips (codes 390, 391, and 393). Such riparian areas may be included in the gross development area for purposes of determining zoning density.
3. The site plan shall consider natural drainage features to minimize runoff. The use of pervious surfaces and areas is preferred, therefore impervious surfaces and materials within the landscaped area shall be limited to borders, sidewalks, step stones, and other similar materials, and shall not exceed (To be inserted by the local government) % of the landscaped area. Use of pervious paving materials is strongly encouraged, and relative imperviousness will be considered.

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

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

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

1. Location of all underground and overhead utilities;
2. Existing and proposed trees, shrubs, ground covers and turf areas within the developed landscape area;
3. Plants by botanical and common name, and where applicable, cultivar name; spacing, and quantities of each type of plant by container size and by mature height and spread;
4. Existing and proposed property lines, streets, street names and public utilities;
5. Existing and proposed hardscape features such as driveway(s) and sidewalk(s) as necessary;
6. Existing and proposed structures such as pool(s), fountain(s), fence(s) and retaining wall(s);
7. Existing and proposed buildings;
8. Indicate in a table the total square footage(s) of the various landscape hydrozones on the plan. If more than one water meter serves the site, the total hydrozone square footages of the various hydrozones must be identified with each Point of Connection (POC) and meter providing water service.

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

1. Irrigation point(s) of connection and design capacity;
2. Water service pressure at irrigation POCs;
3. Water meter size;
4. Reduced-pressure-principle backflow-prevention devices for each irrigation POC on potable water systems;
5. Major components of the irrigation system, including all pumps, filters, valves, and pipe sizes and lengths.
6. Precipitation rate expressed in inches per hour for each valve circuit. The preparer must attach to the Project Data Sheet the calculations for deriving precipitation rates for each irrigation valve circuit;
7. Total flow rate (flow velocity not to exceed 5 feet per second) in gallons per minute (gpm) and operating pressure (psi) for each individual overhead and bubbler circuit, and gallons per hour (gph) and operating pressure for low-flow point irrigation circuit;
8. Irrigation legend will have the following elements: Separate symbols for all irrigation equipment with different spray patterns and precipitation rates and pressure compensating devices; general description of equipment; manufacturer's name and model number for all specified equipment; recommended operating pressure per nozzle and bubbler and low-flow emitter; manufacturer's recommended overhead and bubbler irrigation nozzle rating in gallons per minute (gpm), or gallons per hour (gph) for low flow point applicators; minimum (no less than 75% of maximum spray radius) and maximum spray radius per nozzle; and manufacturer's rated precipitation rate per nozzle at specified psi;
9. Recycled-water piping and guidelines as required; Reclaimed or non-potable water should be used for irrigation if an acceptable source is determined to be available by the (LOCAL

GOVERNMENT) Engineer.

10. Identify location of rain shut-off devices or soil moisture sensors.

11. The irrigation system must take any existing slopes over 10% into account.

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

B. Soils

1. Soils vary from site to site and even within a given site. Soil analysis information is needed for proper selection of plants and, if needed, soil amendments. A soil analysis based on random sampling is required and shall be performed by a reputable soil testing lab or University of Florida/IFAS Cooperative Extension facility.
2. If a landscape design is required, a soil analysis satisfying the following conditions shall be submitted:
 - a. Determination of soil texture, indicating the percentage of organic matter.
 - b. Measurement of pH, and total soluble salts.
 - c. Estimated soil infiltration rate.
3. Existing horticulturally suitable topsoil shall be stockpiled and re-spread during final site grading.
4. Any new soil required shall be similar to the existing soil in pH, texture, permeability, and other characteristics, unless convincing evidence is provided that a different type of soil amendment approach is justified.
5. The use of solid waste compost as a soil amendment is encouraged where it is appropriate.

C. Standards for land clearing and preservation of native vegetation

1. This section shall apply to all development permitted upon approval of this regulation. Parcels or lots independent of larger developments that are less than X acres (to be determined by local govt.) in size shall not be subject to these set-aside requirements. Individual single-family lots are exempt from this requirement; however, single family and planned unit developments are not exempt. Tree preservation ordinances and all other landscape requirements shall remain applicable to all development as described in the tree preservation and landscape ordinances.
2. This ordinance mandates a total of X% percent of a site planned for development be set aside for preservation. When clearing, X% (to be determined by local govt.) of the native vegetation on the site shall be preserved. If vegetation is not present on site, established open space zoning and landscape ordinance criteria shall be followed.
3. Vegetation that is set aside for preservation shall be protected from all on-site construction. Protective barriers shall be installed along the perimeter of all preserve areas. Protective barriers shall be constructed at such intervals to prevent machinery from passing between them. No equipment or materials shall be permitted to be stored within the set-aside areas, and dumping of excess soil, liquids, or any other construction debris within the preservation areas is prohibited. Removal or re-grading of

soils within preservation areas is prohibited. Any damaged vegetation within the set-aside areas shall be replaced with vegetation equivalent to the vegetation destroyed before any certificates of occupancy or other approvals may be issued.

4. Areas that are considered to be of high ecological importance should be given highest priority for protection. These areas include, but are not limited to, areas that have occurrences of federal and state listed species of flora and fauna, areas of high biological diversity, and areas that are in aquifer recharge zones.
5. If more than one native terrestrial plant community is present on the site, areas representing all existing plant communities shall be preserved onsite unless preserving more of one particular community is more ecologically beneficial.
6. Utilities, stormwater easements and right-of-ways are exempt from provisions 1-5 above, but should avoid preserved areas. Although not specifically required, creative alternatives to common practice in these areas may be eligible for incentives.
7. High-quality areas placed in preservation shall be retained in entirety, in their current or improved natural state, and protected into perpetuity regardless of ownership. This requirement may be negotiated to create contiguous preservation among plant communities. The developer shall prove to the reviewer, through exhibits provided during the site approval process, that the highest ecologically valued land is being retained first in order to satisfy the set-aside requirement. If the preservation of the highest ecologically valued land produces undue burden on the development of the property, it is also the developer's responsibility to prove such hardship and provide an acceptable alternative for approval.
8. Areas set aside for preservation should be contiguous parcels of land that are inter-connected and considered viable habitat for wildlife to the extent practical. Small fragmented areas of preservation should be avoided when possible.
9. Rights-of-way and areas determined to be future rights-of-way in the comprehensive plan, and utility or drainage easements shall not be allowed as designated set-aside areas.

D. Appropriate Plant Selection, Location, and Arrangement

1. Plant selection should be based on the plant's adaptability to the existing conditions present at the landscaped area and native plant communities, particularly considering appropriate hardiness zone, soil type and moisture conditions, light, mature plant size, desired effect, color and texture. Plant species that are drought and freeze tolerant are preferred. For purposes of determining prohibited and controlled plant species refer to the Department of Agriculture and Consumer Services rule, Chapter 5B-57 Florida Administrative Code. Plants named in this rule may not be used except as allowed in Chapter 5B-57.
2. Plants shall be grouped in accordance with their respective water and maintenance needs. Plants with similar water and cultural (soil, climate, sun, and light) requirements shall be grouped together. The water use zones (hydrozones) shall be shown on the irrigation, layout, and planting plans (where required). Where natural conditions are such that irrigation is not required, the presence of site appropriate plants shall not be considered a high water use hydrozone.
3. The combined size of all high water use hydrozones shall be limited to X% (to be determined by local govt.) of the total landscaped area. In landscapes irrigated with recycled water, the allowable size of all high water-use zones shall be increased to not more than X% (To be determined by local government.) of the total landscaped

area. These high water-use limits do not apply to landscaped areas requiring large amounts of turf for their primary functions, e.g., ballfields and playgrounds.

E. Turf Areas

1. The type and location of turf areas shall be selected in the same manner as with all the other plantings. Turf species selected for drought resistance shall not be prohibited. Irrigation of turf shall not be required. Irrigated turf areas, as opposed to non-irrigated turf areas, are considered to be a high water use hydrozone. Irrigated turf shall not be treated as a fill-in material but rather as a planned element of the landscape. Turf shall be placed so that it can be irrigated using separate zones. While turf areas provide many practical benefits in a landscape, how and where it is used can result in a significant reduction in water use.
2. Irrigated turfgrass areas shall be consolidated and limited to those areas on the site that receive pedestrian traffic, provide for recreation use, provide cover for septic tank drainfields and required drainfield reserve areas, or provide soil erosion control such as on slopes or in swales; and where turfgrass is used as a design unifier, or other similar practical use. As a matter of public safety, no turfgrass that requires mowing shall be allowed on slopes greater than 4:1 or within 6 feet of the waters edge, except where adjacent to seawalls and bulkheads or needed to control erosion. Turf areas shall be identified on the landscape plan (where plan is required).
3. All automatic irrigation system shall meet the requirements of s373.228 and s373.62 F.S. One of the most common reasons for turf failure is over-irrigation. Irrigation systems shall be designed and operated in accordance with section F.

F. Efficient Irrigation

[Guidance: In 2004, the Florida legislature created section 373.228 Florida Statutes directing the Department of Environmental Protection, the Water Management Districts, and several stakeholder groups to devise standards for Landscape Irrigation and Florida-Friendly landscape design. These standards were adopted in December 2006. Local governments must use these standards when adopting local ordinances after that date. The irrigation standards are based on Appendix F of the Florida Building code.]

1. All irrigation installations after the effective date of this ordinance shall meet the irrigation standards identified per 373.228 F.S. These include:
 - a. Irrigation systems shall be designed to meet the needs of the plants in the landscape (not the other way around).
 - b. When feasible, irrigation systems shall be designed to separately serve turf and non-turf areas.
 - c. The irrigation system plans and specifications shall identify the materials to be used and the construction methods.
 - d. The design shall consider soil, slope, and other site characteristics in order to minimize water waste, including overspray, the watering of impervious surfaces and other non-vegetated areas, and off-site runoff.
 - e. The system shall be designed to minimize free flow conditions in case of damage or other mechanical failure.

- f. The system shall be designed to use the lowest quality water feasible.
- g. Rain switches or other approved devices, such as soil moisture sensors, to prevent unnecessary irrigation, shall be incorporated. (Section 373.62, F.S.)
- h. A recommended seasonal operating schedule and average precipitation rates for each irrigation zone for both establishment and maintenance conditions shall be provided.
- i. Control systems shall provide the following minimum capabilities:
 - i. Ability to be programmed in minutes, by day of week, season and time of day,
 - ii. Ability to accommodate multiple start times and programs,
 - iii. Automatic shut off after adequate rainfall,
 - iv. Ability to maintain time during power outages for a minimum of three days, and
 - v. Operational flexibility to meet applicable year-round water conservation requirements and temporary water shortage restrictions.
- j. Recommended maintenance activities and schedules shall be included.
- k. Precipitation rates for sprinklers and all other emitters in the same zone shall be matched, except that microirrigation emitters may be specified to meet the requirements of individual plants.
- l. Irrigation systems shall be designed to maximize uniformity, considering factors such as:
 - i. Emitter types.
 - ii. Head spacing.
 - iii. Sprinkler pattern.
 - iv. Water pressure at the emitter.
- m. Irrigation systems with main lines larger than two inches or designed to supply more than seventy gallons per minute shall incorporate a means to measure irrigation water use, at a minimum of ninety-five percent accuracy across the flow range.
- n. Irrigation system plans and specifications shall require the system installer to conduct final testing and adjustments to achieve design specifications prior to completion of the system and acceptance by the owner or owner's representative.
- o. Irrigation system plans and specifications shall require that the installer provide property owners and users with the following post-construction documentation, including as-constructed drawings, recommended maintenance activities and schedules, operational schedule, design precipitation rates, instructions on adjusting the system to apply less water after the landscape is established, maintenance schedule, water source, water shut-off method, and the manufacturer's operational guide for their irrigation controller. To the extent feasible, similar information should be made available for subsequent property transfers.

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

- 2. To assist the end user to operate the system properly, in addition to the minimum requirements of 373.228 F.S., the following shall be provided to the owner at the time of installation. The map shall be attached inside each irrigation controller or be kept in another readily available location if it is not practical to insert it in a small controller.
 - a. Irrigation scheduling information, with instructions for seasonal timer and sensor changes,
 - b. An irrigation valve site map detailing
 - i. valve locations,
 - ii. gallons per minute demands,
 - iii. precipitation rates,
 - iv. plant types within valve circuits, and
 - v. operating pressure requirements for each valve
- 3. The irrigation system shall be designed to correlate to the organization of plants into zones as described in (C)

above. The water use zones shall be shown on the Irrigation Plan (where plan is required). All plants (including turf) require watering during establishment. Temporary facilities may be installed to facilitate establishment. Irrigation must be conducted in accordance with WMD restrictions.

Comment [MT22]: Rain shutoff deleted per addition of 11 below IAW 373.62 revisions.

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

[Guidance: In 2009, Section 373.62, Florida Statutes, was amended to add provisions requiring installation, maintenance, and operation of technology that interrupts the operation of automatic irrigation systems during periods of sufficient soil moisture.]

11. In accordance with section 373.62(1), Florida Statutes, devices, such as soil moisture sensors, evapotranspiration-based controllers or rain sensors, shall be required on automatic irrigation systems to prevent irrigation during periods of sufficient moisture. Any person who purchases, installs or operates an automatic landscape irrigation system on their property must properly install, maintain, and operate, in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture.
 - a. In accordance with section 373.62(2), Florida Statutes, a licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and insure that each is operating properly before completing other work on the system.
 - b. In accordance with section 373.62(3)(a) and (b), Florida Statutes, a licensed contractor performing work on an automatic landscape irrigation system shall report systems that are not in compliance with section 373.62, Florida Statutes, to the (appropriate LOCAL GOVERNMENT authority). Failure of a contractor to report non-compliant systems within five business days is punishable by fines as specified in the Violations and Penalties section of this ordinance. A system that is repaired by the contractor is brought into compliance and need not be reported.
 - c. In accordance with section 373.62(3)(b), Florida Statutes, regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of section 373.62, Florida Statutes, or this ordinance if such repairs are made within thirty days from the time non-compliance is noted.

G. Yard and Pet Waste Management, Composting and Use of Mulches

1. In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable. Yard wastes shall not be stored by shorelines, in ditches or swales, or near storm drains.

[Guidance: Yard wastes release nutrients as they decompose which may pollute the receiving water. Improper disposal of yard wastes can also contribute to flooding by causing stormwater runoff to backup in drainage systems. In addition, improper disposal may lead to spreading of invasive plants to new areas.]

2. Shredded yard clippings and leaves should be used for mulch or be composted for use as fertilizer. However, diseased material should not be mulched and should be properly disposed of to avoid spreading disease.
3. Composting of yard wastes provides many benefits and is strongly encouraged. The resulting materials are excellent soil amendments and conditioners. Other recycled solid waste products are also available and should be used when appropriate. *[Guidance: Most Florida communities have these programs at their landfill. Incentives may be created to encourage their use, such as a tonnage credit for dumping based on use of composted material.]*
4. Grass clippings are a benefit to lawns, replacing nutrients drawn from the soil and as mulch that helps retain moisture, lessening the need to irrigate. Grass clippings should be left on your lawn. Mulching mowers are recommended, because the grass clippings are chopped very finely by special blade and shroud configurations. If a conventional mower equipped with a side discharge chute is used, the following practices should be employed. When mowing near the shoreline, direct the chute away from the water body. When mowing upland areas, direct the chute back onto the yard, not onto the road or driveway.
5. Mulches applied and maintained at appropriate depths in planting beds assist soils in retaining moisture, reducing weed growth, and preventing erosion. Mulch can also be used in places where conditions aren't adequate for or conducive to growing quality turf or ground covers. Mulches are typically wood bark chips, wood grindings, pine straws, nut shells, shell, gravel, or shredded landscape leaves and clippings.
6. A layer of organic mulch 3" deep shall be specified on the landscape plans in plant beds and around individual trees in turfgrass areas. Use of byproduct or recycled mulch is recommended. Mulch is not required in annual beds. Mulch rings should extend to at least 3 feet around freestanding trees and shrubs. All mulch should be renewed periodically. Mulches should be kept at least 6 inches away from any portion of a building or structure, or the trunks of trees. Plastic sheeting and other impervious materials shall not be used under mulched areas.
7. The owner of any animal shall remove animal waste from his or her property if it poses a threat of contamination to stormwater runoff to water bodies or to impervious surfaces, or to the health, safety or well being of any animals or persons.

H. Fertilizer Management

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

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

1. *Have directions for use not to exceed rates recommended in the document titled SL191 "Recommendations for N, P, K and Mg for Golf Course and Athletic Field Fertilization Based on*

Mehlich I Extractant”, dated March 2007, which is hereby adopted and incorporated by reference into this rule. Copies may be obtained from the Soil and Water Science Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL 32611 or the following website: <http://edis.ifas.ufl.edu/SS404>.

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

Note that this does not exempt applicators at these sites from the required basic Green Industry BMP training. Information on this is located at http://fyn.ifas.ufl.edu/professionals/BMP_overview.htm. If other provisions of the ordinance are not appropriate for these sites, such exceptions should be noted.]

1. Fertilizer content and application rates

- a. Fertilizers applied to turf within (MUNICIPALITY / COUNTY) shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.
- b. Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test. *[Guidance: Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. IFAS recommendations are available from the County Extension service or http://solutionsforyourlife.ufl.edu/lawn_and_garden/]*

Comment [MT23]: The Urban Turf Rule does not address landscape plants. UF/IFAS recommendations should not be exceeded without testing.

Comment [MT24]: Testing did not support the reliability of any of the home test kits tested.

2. Timing of fertilizer application

- a. No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, or to saturated soils.
- b. Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

Comment [MT25]: Clarification. This is already implied in the definition of the prohibited period and the BMPs, but an explicit statement seems to be needed for clarification.

Comment [MT26]: Clarification. This is already implied in the definition of the prohibited period and the BMPs, but an explicit statement seems to be needed for clarification.

Comment [MT27]: Based upon new research from the UF/DEP research effort, this provision was added to the 2008 BMPs.

Comment [MT28]: Added 6/4/10. Prevention of erosion at construction sites greatly outweighs the limited fertilizer risk in this exemption.

[Guidance: One of the most controversial issues associated with recent fertilizer ordinances enacted by local governments is the definition of the Prohibited Application Period. Some ordinances have prohibited the application of fertilizer, even slow release formulations, during the summer rainy season, typically June 1 to September 30. The reasoning is that rain occurs frequently, saturating the soil, leading to more runoff. Saturated soils are prone to runoff or leaching with little or no additional water, and pose a higher than normal risk until soil moisture capacity is restored. Fertilizer management is largely about keeping the nitrogen and/or phosphorus in the root zone where it can be used by plants. Periods of heavy rainfall contribute to leaching, which is washing nutrients out of the root zone, and to runoff, especially in areas with compacted or bare soils and significant slope. Vegetative ground cover is important to minimizing erosion, filtering particulates, and incorporating or promoting the biological transformation of potential pollutants. Many variables influence the relationship between fertilizer rates, vegetation health and nutrient enrichment of surface and ground waters. Accordingly, sound science and carefully reasoned judgment are recommended in determining how to define the Prohibited Application Period.]

Comment [MT29]: Guidance modified for clarity.

3. Application practices

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

Comment [MT30]: {swf / ifas} alternative? ... prevented from reaching impervious surfaces, fertilizer-free zones or water bodies, including wetlands.

4. Fertilizer free zones

- a. Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained.
- b. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations.
- c. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 days after planting if need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water.

Comment [MT31]: Clarification. Although specified in 2008 BMPs, confusion has existed in some areas to whether liquid application has a zero, 3, or 10 foot setback to prevent inadvertent application to water.

Comment [MT32]: Clarification. Although specified in 2008 BMPs, confusion has existed in some areas to whether liquid application has a zero, 3, or 10 foot setback to prevent inadvertent application to water.

[Guidance: This zone is a setback to prevent the applicator from inadvertently depositing fertilizer in the water while performing the application. It is not designed as a treatment buffer, and is to be adhered to as a fundamental environmental safety aspect of the applicator's job, regardless of the owner's desires. Some communities have existing residential setbacks of as little as 10 feet from water or seawall. Low maintenance zones, vegetated filter strips, and riparian buffers are strongly encouraged, but such activities are rightly a part of land use planning. Local governments are encouraged to implement these low-impact development practices where feasible.]

Comment [MT33]: Clarification of the purpose of this much misunderstood "ring-of-responsibility."

I. Pesticide Management

- 1. All landscape applications of pesticides, including Weed and Feed products, for hire should be made in accordance with State and Federal Law and with the most current version of the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries. *[Guidance: The use of "should" in the preceding sentence is required, because "shall" would create a violation of s482.242 or s487.051(2), Florida Statutes. Regulation of pesticides is pre-empted to the Florida Dept. of Agriculture and Consumer Services (FDACS) by state law.] [Guidance: Florida Statutes 482.156 and 482.1562. Neither the Limited Commercial Landscape Maintenance Certification Program nor the Limited Certification for Urban Landscape Commercial Fertilizer Application allows landscape maintenance workers to make any kind of pesticide applications (including weed control and/or weed and feed products) to any turf areas.]*

Comment [MT34]: Per SB 494

2. Property owners and managers are encouraged to use an Integrated Pest Management Strategy as currently recommended by the University of Florida Cooperative Extension Service publications.
3. When using pesticides, all label instructions are state and federal law and must be adhered to. The Florida Department of Agriculture and Consumer Services is responsible for enforcement of pesticide laws.

J. Landscape and Irrigation Maintenance

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

1. In no case shall grass clippings, vegetative material, and/or vegetative debris either intentionally or accidentally, be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways.
2. Landscape maintenance for hire shall be performed in accordance with recommendations in the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*.
3. Landscape maintenance by homeowners should be performed in accordance with recommendations of the University of Florida Cooperative Extension Service and current Florida Yards & Neighborhoods program publications.
4. A regular irrigation maintenance schedule shall include but not be limited to checking, adjusting, and repairing irrigation equipment; and resetting the automatic controller according to the season.
5. To maintain the original performance and design integrity of the irrigation system, repair of the equipment shall be done with the originally specified materials or their equivalents.

K. Shoreline Considerations

[Guidance: Ideally, shorelines should remain completely natural to most effectively use or absorb nutrients and protect from erosions. Riparian buffers as described in section 9.A.2 should be required for all new development. Unfortunately, many waterfront property owners have removed beneficial vegetation and formed sandy beaches along their shorelines. This loss of a natural buffer may contribute to shock loads of nutrients and other pollutants affecting the waterbody and may lead to erosion. Florida Fish and Wildlife Conservation Commission Rule 68F-20.002 (1) states “No person shall attempt to control, eradicate, remove, or otherwise alter any aquatic plants in waters of the state, including those listed in s. 369.251, F.S., except as provided in a permit issued by the Commission unless the waters in which aquatic plant management activities are to take place are expressly exempted in Rule 68F-20.0035, F.A.C.”

Shoreline vegetation can often be restored through aquascaping. Advice regarding appropriate plants for aquascaping and locating sources for these plants in your area may be obtained by contacting the Florida Fish and Wildlife Conservation Commission Invasive Plant Management Section, the UF Cooperative Extension Service in each county and/or the UF Center for Aquatics and Invasive Plants. A simple, free of charge permit may be required from the Invasive Plant Management Section for activities involving aquatic plants along freshwater shorelines at <http://myfwc.com/license/aquatic-plants/>.

Florida Fish and Wildlife Conservation Commission Rule 68F-52.003 (4) states “Only native aquatic plants cultured in a nursery regulated by the Department of Agriculture and Consumer Services or collected from an approved wild collection site shall be used for the re-vegetation, restoration, or mitigation of wetlands in sovereignty lands. No prohibited or non-native aquatic plant shall be placed in, or knowingly be distributed for use in natural waters, or waters connected to natural waters. Non-native plants not on the prohibited plant list may be used in artificially created ponds and water gardens that are not connected to natural waters.”

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

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

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

1. Grading and design of property adjacent to bodies of water shall conform to Federal, State and Local regulations which may include but is not limited to the use of berms and/or swales to intercept surface runoff of water and debris that may contain fertilizers or pesticides.
2. A voluntary ten (10) foot low maintenance zone is recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent *[Guidance: Such as 9.A.2, above, for new developments.]* (LOCAL GOVERNMENT) code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material should be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone. *[Guidance: Care must be taken to ensure erosion of the surface soil does not occur. Excessive erosion may be a greater pollution hazard than occasional proper applications of fertilizer.]*
3. When mowing near the shoreline, direct the chute away from the water body. Riparian or littoral zone plants that do not require mowing or fertilization should be planted in these areas. See the *Florida Waterfront Property Owners Guide* or the Florida Fish and Wildlife Conservation Commission's Invasive Plant Management Section for more information. Where water levels vary considerably, care must be taken in the selection of these plants.
4. Decks along the waters edge and into the water shall meet all local and state government regulations and any other lawful requirements. The maximum distance any structure may protrude into the water is X feet (To be inserted by local government) from the normal high water mark on the bank. The maximum total width of a deck structure along the shoreline of any lot is 20% of the waterfront footage of that lot. The remainder of the shoreline should remain as natural as possible. Lot owners located on ditches may add 20' to their front footage for calculation purposes. Special permits may be required. No structures are permitted that obstruct the flow of water.
5. Mangrove trimming shall be performed in accordance with Sections 403.9321 - 403.9334, Florida Statutes. The *Florida Waterfront Property Owners Guide* published by the Florida Department of Environmental Protection should be referred to for additional information about Florida-friendly shoreline practices.

10. EDUCATION

[Guidance: To assist in public information, the education of its citizens, and the effective implementation of this ordinance, the (LOCAL GOVERNMENT) should coordinate its efforts with those of the Water Management District and the (_____ County) Agricultural Extension Service and other agencies. These entities should jointly

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

- A. All persons providing landscape maintenance services for hire (including appropriate LOCAL GOVERNMENT Maintenance Operations staff, and institutional landscape workers) shall be trained in the *Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*
- a. Within 180 days of this ordinance, all commercial and institutional applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), shall abide by and successfully complete the six-hour training program in the “Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscapes” program, or an approved equivalent.
 - b. Within 1 year if the individual is not involved in the application of fertilizer.
 - c. Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

Comment [MT35]: Per SB494.

[Guidance: A local government may establish a certification/education program for the institutional or private application of fertilizers indicating the completion of an education program for special local requirements not covered in the above programs. It is up to the local government to set a continuing education or renewal provision for these applicators. Persons with statewide FDACS commercial fertilizer certification cannot be required to submit to additional local testing after obtaining the FDACS certificate.]

Comment [MT36]: Clarification

Comment [MT37]: SB 494. MOA on DEP website

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

- B. New employees shall be trained within 90 days of starting a new position.

11. INCENTIVES

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

- A. Any development that exceeds the water-efficient design principles and Florida-Friendly Landscaping™ standards established by this ordinance shall receive a reduction in the (LOCAL GOVERNMENT) permit

application fee. [or impact fee, stormwater utility rate, etc.]

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

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

12. ENFORCEMENT AND MONITORING

Implementation and enforcement of these regulations shall consist of:

A. Licensing

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

1. Licensing of contractors performing work on irrigation systems. All contractors performing work on irrigation systems within the (un)incorporated area of (Municipality/County), shall be licensed or registered under chapter 489, Florida Statutes, or hold a county or municipally-issued license or business tax certificate that permits work on irrigation systems.

2. Prior to 1 January 2014, all commercial applicators of fertilizer within the (un)incorporated area of (LOCAL GOVERNMENT), shall abide by and successfully complete training and continuing education requirements in the “*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*”, offered by the Florida Department of Environmental Protection through the University of Florida IFAS “Florida-Friendly Landscapes” program, or an approved equivalent program, prior to obtaining a (LOCAL GOVERNMENT) Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the (LOCAL GOVERNMENT) Tax Collector’s office within 180 days of the effective date of this ordinance. *[Guidance: The ordinance is prospective only. Occasions may exist for a finite time where pre-existing contract terms mandate practices not in accordance with the BMPs. Such terms should be voided at contract expiration.]*

Comment [MT38]: 403.9338

3. After 31 December, 2013, all commercial applicators of fertilizer within the (un)incorporated area of (LOCAL GOVERNMENT), shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.

Comment [MT39]: SB 494

4. All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a “*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries*” training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the (Municipality/ County) Tax Collector’s Office. *[Guidance: This is an example of an administrative enforcement mechanism. It may be modified to use other local mechanisms as appropriate].*

Comment [MT40]: This is an example of an administrative enforcement mechanism. It may be modified to use other local mechanisms as appropriate.

5. Non-commercial applicators not otherwise required to be certified, such as private citizens on their own residential property, are encouraged to follow the recommendations of the University of Florida IFAS Florida Yards and Neighborhoods program when applying fertilizers.

6. Within 1 year of the effective date of this ordinance, all businesses performing design, installation, or maintenance services involving Turf and/or Landscape Plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that all supervisory employees have an appropriate certification (i.e., the *Florida Department of Environmental Protection’s Green Industries Best Management Practices* certification), prior to the business owner obtaining a Local Business Tax Certificate. Non-supervisory employees that do not apply fertilizer must be trained but do not require certification. Owners for any category of occupation which may perform design, installation, or maintenance services involving Turf and/or Landscape Plants shall provide proof of certification and training to the (Municipality/ County) Tax Collector’s Office. This provision does not apply to the licensed professional practice of Landscape Architecture, Architecture, or Engineering.

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

B. Inspections

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

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

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

D. Injunctive Relief

If any person engages in activities regulated by this ordinance without having obtained an approved permit as provided within this ordinance or continues in violation of the provisions of this ordinance or the regulations promulgated pursuant thereto, then the (LOCAL GOVERNMENT) may file an action for

injunctive relief in a court of competent jurisdiction.

13. FEES

Permit Fees

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

14. VARIANCES

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

15. VIOLATIONS AND PENALTIES

[Guidance: Fines in this section reflect the minimum penalty suggested in section 373.62(3)(b), Florida Statutes. Local governments should consider making penalties consistent with their other fines and penalties.]

[Guidance: Though beyond the scope of the model ordinance required by section 373.62(3), a local government may also wish to consider fines for system owners or operators who fail to bring systems into compliance. Language similar to the following could be included: Failure of any person who purchases, installs, or operates an automatic landscape irrigation system on their property, or property managed by them, to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture is guilty of a violation of section 373.62, Florida Statutes and this ordinance, and shall be subject to a fine of (insert appropriate penalty).]

- A. Failure of a licensed contractor to report to (appropriate municipal/county authority) automatic landscape irrigation systems that are not in compliance with this ordinance and section 373.62, Florida Statutes, which requires properly operating devices to inhibit or interrupt the operation of

the irrigation system during periods of sufficient moisture, shall be subject to a fine of not less than \$50.00 for a first offense, \$100.00 for a second offense, and \$250.00 for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by (Municipality/ County) for the administration and enforcement of section 373.62, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation activities.

- B. For any violation other than addressed in (A), which does not constitute a threat to life or property, the (LOCAL GOVERNMENT) shall have the authority to issue a citation and/or to withhold a certificate of occupancy. The citation shall be in the form of a written official notice issued in person or by certified mail to the owner of the property, or to his agent, or to the person doing the work. The receipt of a citation shall require that corrective action be taken within thirty (30) calendar days, unless otherwise extended at the discretion of the (LOCAL GOVERNMENT). If the required corrective action is not taken within the time allowed, the (LOCAL GOVERNMENT) may use any available civil or criminal remedies to secure compliance, including revoking a permit.
- C. The (LOCAL GOVERNMENT) shall have resource to such civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of this section of this ordinance, including injunctive relief to rejoin and restrain any person from violating the provisions of this section of this ordinance and to recover such damages as may be incurred by the implementation of specific corrective actions.
- D. A conviction for violation of the provisions of this section shall be punishable by a fine or imprisonment, or both such fine and imprisonment as provided in Section 125.69, Florida Statutes.

16. CONFLICTS AND RELATIONSHIP TO OTHER LAWS

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

17. SEVERABILITY

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

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

18. INCLUSION IN CODE, CODIFICATION, SCRIVENERS ERRORS

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

19. REPEAL

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

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

20. EFFECTIVE DATE

This ordinance shall take effect _____, 20__.

PASSED ON FIRST READING _____ (Date)

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

(Signature) (Name)
Mayor-Commissioner or Chairman

Attest:

____ (Signature)

(Name)

City Clerk or Clerk of Circuit Court

Approved as to form and correctness:

____ (Signature)

(Name)

City or County Attorney

FERTILIZER

DRAFT

Florida Department of Environmental Protection

Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes

**alternate title: Model Ordinance for
Florida-Friendly Use of Fertilizer on Urban Landscapes
2013**

[Note: Title revision for clarity. There is no defined Florida-Friendly fertilizer product; as timing, chemistry, grade, amount, site-specific conditions and application practices all affect “Florida-friendliness”.]

INTRODUCTION

This attached Model Fertilizer Use Ordinance is another tool to reduce sources of nutrients coming from urban landscapes to reduce the impact of nutrients on Florida’s surface and ground waters. Limiting the amount of fertilizer applied to the landscape will reduce the risk of nutrient enrichment of surface and ground waters, but effective nutrient management requires more comprehensive control measures. Such a comprehensive approach is needed that may include, but is not limited to, land planning and low-impact development, site plan design, landscape design, irrigation system design and maintenance, fertilizer application, landscape maintenance, and waste disposal. To assist local governments in improving their existing land development regulations, several “model” ordinances have been developed. These include:

- “Low Impact Design” ordinances which seek to reduce the impact of urbanization on our natural resources by stressing “source controls” that either minimize the generation of stormwater or minimize the pollutants that can get into stormwater. For example, promoting development designs that minimizes clearing of natural vegetation and the compaction of urban soils. A Model Springs Protection Code was developed by DCA, DEP, and other stakeholders that includes specific Land Development Regulation recommendations that promote Low Impact Design. This Model Code is available as Chapter 5 in *Protecting Florida’s Springs: An Implementation Guidebook*. It is available at <http://www.dca.state.fl.us/fdcp/DCP/springs/index.cfm>.
- “Landscape Ordinances” because design, construction, and maintenance are major determinants in the amount of fertilizer and irrigation that is needed to maintain healthy urban landscapes and minimize adverse impacts on water resources. A model Landscape Ordinance entitled “Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida-friendly Lawns and Landscapes” was developed by a group of agencies, industries, and interest groups over a two year period and published in 2003. It was fundamentally an adaptation of earlier water conservation ordinances revised to include water quality protections for compliance with Total Maximum Daily Load (TMDL) or stormwater NPDES permit requirements. The language focused on continuing education of lawn care and landscape professionals, proper planning and supervision during development and construction, and the use of best management practices, including the Florida-Friendly Landscape Program. This model ordinance has been renamed “Florida-Friendly Landscaping™ Model Guidelines for Ordinance Language for Protection of Water Quality and Quantity,” updated in 2008 and 2010 and may be downloaded from:

<http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.

- Finally, the 2004 Florida Legislature directed Florida's water management districts to work with interested parties to develop landscape irrigation and Florida-Friendly design standards for new construction (section 373.228, F.S.). Local governments are to use the standards and guidelines when developing landscape irrigation and Florida-Friendly ordinances. The Committee on Landscape Irrigation and Florida-Friendly Design Standards convened and developed the standards. They are published in a booklet called *Landscape Irrigation and Florida-friendly Design Standards (December 2006)*. The 2009 Legislature has directed that it be revised in 2011. The current version of this document can be downloaded from: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm

DRAFT

**MODEL ORDINANCE FOR FLORIDA-FRIENDLY USE OF FERTILIZER ON URBAN
LANDSCAPES
(January 2013)**

1. FINDINGS

As a result of impairment to (MUNICIPALITY / COUNTY)'S surface waters caused by excessive nutrients, or, as a result of increasing levels of nitrogen in the surface and/or ground water within the aquifers or springs within the boundaries of (municipality/county), the governing body of (municipality / county) has determined that the use of fertilizers on lands within (municipality / county) creates a risk to contributing to adverse effects on surface and/or ground water. Accordingly, the governing board of (municipality/county) finds that management measures [*Guidance: optional "additional management measures than are otherwise"*] contained in the most recent edition of the "Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2010," may be required by this ordinance.

2. PURPOSE AND INTENT

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

3. DEFINITIONS

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

"Administrator" means the (MUNICIPALITY / COUNTY) Administrator, or an administrative official of (MUNICIPALITY / COUNTY) government designated by the City/County Administrator to administer and enforce the provisions of this Article.

"Application" or "Apply" means the actual physical deposit of fertilizer to turf or landscape plants.

“Applicator” means any Person who applies fertilizer on turf and/or landscape plants in (MUNICIPALITY / COUNTY).

“Board or Governing Board” means the Board of City/County Commissioners of (MUNICIPALITY / COUNTY), Florida.

“Best Management Practices” means turf and landscape practices or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.

“Code Enforcement Officer, Official, or Inspector” means any designated employee or agent of (MUNICIPALITY / COUNTY) whose duty it is to enforce codes and ordinances enacted by (MUNICIPALITY / COUNTY).

“Commercial Fertilizer Applicator”, except as provided in 482.1562(9) F.S., means any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator.

“Fertilize,” “Fertilizing,” or “Fertilization” means the act of applying fertilizer to turf, specialized turf, or landscape plants.

“Fertilizer” means any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil. **For the purposes of this ordinance, the term “fertilizer” does not include unmanipulated vegetable manures, peat, or compost which make no claims as described in the preceding sentence.**

“Guaranteed Analysis” means the percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.

“Institutional Applicator” means any person, other than a private, non-commercial or a Commercial Applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants. Institutional Applicators shall include, but shall not be limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.

“Landscape Plant” means any native or exotic tree, shrub, or groundcover (excluding turf).

“Low Maintenance Zone” means an area a minimum of ten (10) feet wide adjacent to water courses which is planted and managed in order to minimize the need for fertilization, watering, mowing, etc.

“Person” means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

“Prohibited Application Period” means the time period during which a Flood Watch or Warning, or a Tropical Storm Watch or Warning, or a Hurricane Watch or Warning is in effect for any portion of (CITY/COUNTY), issued by the National Weather Service, or if heavy rain² is likely.

“(MUNICIPALITY / COUNTY) Approved Best Management Practices Training Program” means a training program approved per 403.9338 F.S., or any more stringent requirements set forth in this Article that includes the most current version of the Florida Department of Environmental Protection’s “*Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries, 2008*,” as revised, and approved by the (MUNICIPALITY / COUNTY) Administrator.

“Saturated soil” means a soil in which the voids are filled with water. Saturation does not require flow. For the purposes of this ordinance, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water. *[Guidance: Some have questioned the enforceability of practical field definitions which should be considered before adoption.]*

“Slow Release,” “Controlled Release,” “Timed Release,” “Slowly Available,” or “Water Insoluble Nitrogen” means nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product.

“Turf,” “Sod,” or “Lawn” means a piece of grass-covered soil held together by the roots of the grass.

“Urban landscape” means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in s. 570.02.

4. APPLICABILITY

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

[Guidance: In 403.9336, the Legislature further finds that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level. Local government may adopt additional or more stringent provisions to the model ordinance as provided in 403.9337(2). However, the local government should consider the disadvantages of confusing jurisdictional differences and should clearly demonstrate they meet the required criteria:

(2) Each county and municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to s. 403.067, shall, at a minimum, adopt the

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

department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. A local government may adopt additional or more stringent standards than the model ordinance if the following criteria are met:

- (a) *The local government has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science based, and economically and technically feasible, that additional or more stringent standards than the model ordinance are necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body.*
- (b) *The local government documents that it has considered all relevant scientific information, including input from the department, the institute, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation. All documentation must become part of the public record before adoption of the additional or more stringent criteria.]*

[Guidance: Florida Statutes 125.568(3), 166.048(3), 373.185(3), 720.3075(4), and others provide that a local ordinance, deed restriction or covenant may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision of part II of this chapter {373} or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to Chapter 373 part II.]

[Guidance: Florida Statutes 482.156 and 482.1562. Neither the Limited Commercial Landscape Maintenance Certification Program nor the Limited Certification for Urban Landscape Commercial Fertilizer Application allows landscape maintenance workers to make any kind of pesticide applications (including weed control and/or weed and feed products) to any turf areas.]

[Guidance: Florida Statutes 482.242, and 487.051 (2), F.S. Regulation of pest control businesses and applicators, and of pesticide use, is preempted to the Florida Department of Agriculture and Consumer Services (FDACS) and suspected pesticide misuse should be reported to FDACS.]

5. TIMING OF FERTILIZER APPLICATION

- (a) No applicator shall apply fertilizers containing nitrogen and/or phosphorus to turf and/or landscape plants during the Prohibited Application Period, or to saturated soils.
- (b) Fertilizer containing nitrogen or phosphorus shall not be applied before seeding or sodding a site, and shall not be applied for the first 30 days after seeding or sodding, except when hydro-seeding for temporary or permanent erosion control in an emergency situation (wildfire, etc.), or in accordance with the Stormwater Pollution Prevention Plan for that site.

[Guidance: One of the most controversial issues associated with recent fertilizer ordinances enacted by local governments is the definition of the Prohibited Application Period. Some ordinances have prohibited the application of fertilizer, even slow release formulations, during the summer rainy season, typically June 1 to September 30. The reasoning is that rain occurs frequently, saturating the soil, leading to more runoff. Saturated soils are prone to runoff or leaching with little or no additional water, and pose a higher than normal risk until soil moisture capacity is restored. Fertilizer management is largely about keeping the nitrogen and/or phosphorus in the root zone where it can be used by plants. Periods of heavy rainfall contribute to leaching, which is washing nutrients out of the root zone, and to runoff, especially in areas with compacted or bare soils and significant slope. Vegetative ground cover is important to minimizing erosion, filtering particulates, and incorporating or promoting the biological transformation of potential pollutants. Many variables influence the relationship between fertilizer rates, vegetation health and nutrient enrichment of surface and ground waters. Accordingly, sound science and carefully reasoned judgment are recommended in determining how to define the Prohibited Application Period.]

6. FERTILIZER FREE ZONES

Fertilizer shall not be applied within ten (10) feet of any pond, stream, watercourse, lake, canal, or wetland as defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) or from the top of a seawall, unless a deflector shield, drop spreader, or liquid applicator with a visible and sharply defined edge, is used, in which case a minimum of 3 feet shall be maintained. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. Newly planted turf and/or landscape plants may be fertilized in this Zone only for a sixty (60) day period beginning 30 days after planting if need to allow the plants to become well established. Caution shall be used to prevent direct deposition of nutrients into the water. *[Guidance: This zone is a setback to prevent the applicator from inadvertently depositing fertilizer in the water while performing the application. It is not designed as a treatment buffer, and is to be adhered to as a fundamental environmental safety aspect of the applicator's job, regardless of the owner's desires. Some communities have existing residential setbacks of as little as 10 feet from water or seawall. Low maintenance zones, vegetated filter strips, and riparian buffers are strongly encouraged, but such activities are rightly a part of land use planning. Local governments are encouraged to implement these low-impact development practices where feasible.]*

7. LOW MAINTENANCE ZONES

A voluntary ten (10) foot low maintenance zone is strongly recommended, but not mandated, from any pond, stream, water course, lake, wetland or from the top of a seawall. A swale/berm system is recommended for installation at the landward edge of this low maintenance zone to capture and filter runoff. If more stringent (MUNICIPALITY / COUNTY) Code regulations apply, this provision does not relieve the requirement to adhere to the more stringent regulations. No mowed or cut vegetative material may be deposited or left remaining in this zone or deposited in the water. Care should be taken to prevent the over-spray of aquatic weed products in this zone. *[Guidance: Care must be taken to ensure erosion of the surface soil does not occur.]*

Excessive erosion may be a greater pollution hazard than occasional proper applications of fertilizer.]

8. FERTILIZER CONTENT AND APPLICATION RATES

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

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

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

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

Note that this does not exempt applicators at these sites from the required basic Green Industry BMP training. Information on this is located at http://fyn.ifas.ufl.edu/professionals/BMP_overview.htm. If other provisions of the ordinance are not appropriate for these sites, such exceptions should be noted.]

*(a) Fertilizers applied to turf within (MUNICIPALITY / COUNTY) shall be applied in accordance with requirements and directions provided by Rule 5E-1.003(2), Florida Administrative Code, *Labeling Requirements For Urban Turf Fertilizers*.*

(c) Nitrogen or phosphorus fertilizer shall not be applied to turf or landscape plants except as provided in (a) above for turf, or in UF/IFAS recommendations for landscape plants, vegetable gardens, and fruit trees and shrubs, unless a soil or tissue deficiency has been verified by an approved test. [Guidance: Soil and tissue tests for phosphorus are normally done by UF/IFAS or another accredited laboratory. IFAS recommendations are available from the County Extension service or http://solutionsforyourlife.ufl.edu/lawn_and_garden/]

9. APPLICATION PRACTICES

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

conveyances, or water bodies.

10. MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER

In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into stormwater drains, ditches, conveyances, water bodies, wetlands, or sidewalks or roadways. Any material that is accidentally so deposited shall be immediately removed to the maximum extent practicable.

11. EXEMPTIONS

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

(a) bona fide farm operations as defined in the Florida Right to Farm Act, Section 823.14 Florida Statutes;

(b) other properties not subject to or covered under the Florida Right to Farm Act that have pastures used for grazing livestock;

(c) any lands used for bona fide scientific research, including, but not limited to, research on the effects of fertilizer use on urban stormwater, water quality, agronomics, or horticulture.

[Guidance: Limited waivers for special cases such as botanical gardens, etc. should not be considered as less stringent for the purposes of the model as a minimum requirement.]

12. TRAINING

(a) All commercial and institutional applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), shall abide by and successfully complete the six-hour training program in the “Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries” offered by the Florida Department of Environmental Protection through the University of Florida Extension “Florida-Friendly Landscapes” program, or an approved equivalent.

(b) Private, non-commercial applicators are encouraged to follow the recommendations of the University of Florida IFAS *Florida Yards and Neighborhoods* program when applying fertilizers.

[Guidance: A local government may establish a certification/education program for the institutional or private application of fertilizers indicating the completion of an education program for special local requirements not covered in the above programs. It is up to the local government to set a continuing education or renewal provision for these applicators. Persons with statewide FDACS commercial fertilizer certification cannot be required to submit to additional local testing after obtaining the FDACS certificate.]

13. LICENSING OF COMMERCIAL APPLICATORS

(a) Prior to 1 January 2014, all commercial applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), shall abide by and successfully complete training and continuing

education requirements in the “*Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries*”, offered by the Florida Department of Environmental Protection through the University of Florida IFAS “Florida-friendly Landscapes” program, or an approved equivalent program, prior to obtaining a (MUNICIPALITY / COUNTY) Local Business Tax Certificate for any category of occupation which may apply any fertilizer to turf and/or landscape plants. Commercial Fertilizer Applicators shall provide proof of completion of the program to the (MUNICIPALITY / COUNTY) Tax Collector’s office within 180 days of the effective date of this ordinance. *[Guidance: The ordinance is prospective only. Occasions may exist for a finite time where pre-existing contract terms mandate practices not in accordance with the BMPs. Such terms should be voided at contract expiration.]*

(b) After 31 December, 2013, all commercial applicators of fertilizer within the (un)incorporated area of (MUNICIPALITY / COUNTY), shall have and carry in their possession at all times when applying fertilizer, evidence of certification by the Florida Department of Agriculture and Consumer Services as a Commercial Fertilizer Applicator per 5E-14.117(18) F.A.C.

(c) All businesses applying fertilizer to turf and/or landscape plants (including but not limited to residential lawns, golf courses, commercial properties, and multi-family and condominium properties) must ensure that at least one employee has a “Florida-friendly Best Management Practices for Protection of Water Resources by the Green Industries” training certificate prior to the business owner obtaining a Local Business Tax Certificate. Owners for any category of occupation which may apply any fertilizer to Turf and/or Landscape Plants shall provide proof of completion of the program to the (Municipality/ County) Tax Collector’s Office. *[Guidance: This is an example of an administrative enforcement mechanism. It may be modified to use other local mechanisms as appropriate].*

14. ENFORCEMENT

[Guidance: Local governments should consider making penalties consistent with their other fines and penalties.]

Funds generated by penalties imposed under this section shall be used by (Municipality/ County) for the administration and enforcement of section 403.9337, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation and nonpoint pollution prevention activities.

PET WASTE MODEL ORDINANCES

DRAFT

(Adapted from NJ DEP 2004)

Ordinance # [] - Pet Waste

SECTION I. Purpose:

An ordinance to establish requirements for the proper disposal of pet solid waste in **[insert name of municipality]**, so as to protect public health, safety and welfare, and to prescribe penalties for failure to comply.

SECTION II. Definitions:

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. Immediate – shall mean that the pet solid waste is removed at once, without delay.
- b. Owner/Keeper – any person who shall possess, maintain, house or harbor any pet or otherwise have custody of any pet, whether or not the owner of such pet.
- c. Person – any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.
- d. Pet - a domesticated animal (other than a disability assistance animal) kept for amusement or companionship.
- e. Pet solid waste – waste matter expelled from the bowels of the pet; excrement
- f. Proper disposal – placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or disposal into a system designed to convey domestic sewage for proper treatment and disposal.

SECTION III. Requirement for Disposal:

All pet owners and keepers are required to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person.

SECTION IV. Exemptions:

Any owner or keeper who requires the use of a disability assistance animal shall be exempt from the provisions of this section while such animal is being used for that purpose.

SECTION V. Enforcement:

The provisions of this Article shall be enforced by the **[Police Department and the Local Board of Health]** of **[insert name of municipality]**.

SECTION VI. Violations and Penalty:

Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a fine not to exceed **[insert amount]**.

SECTION VII. Severability:

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an

independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

SECTION VIII. Effective date:

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

ALL OF WHICH IS ADOPTED this _____ day of _____, 201____, by the _____.

City of Fort Lauderdale Pet Waste Ordinance Language

The City of Fort Lauderdale has regulations regarding proper pet waste disposal.

Section 6-4(c) of the City’s Code of Ordinances states that:

“It shall further be unlawful for a person to allow or permit a dog or other pet or domesticated animal within that person's control to deposit animal waste (except for law enforcement animals while on duty) upon any public or private property and to fail to promptly remove the animal's waste from the property.”

City of Tallahassee Pet Waste Ordinance Language

Ordinance No. 10-O15-AA

Section 4.11. Removal of animal waste.

- (a) The owner of any animal shall be responsible for the removal of any excreta deposited by his/her animal on public walks, recreation areas, public streets, or private property other than the premises of the owner of the animal.
- (b) The owner of any animal shall remove animal waste from his or her property if it poses a threat to the health, safety or well being of any animals or persons.
- (c) This section shall not apply to disabled persons accompanied by a service animal used for assistance in accordance with the law.

IRRIGATION

DRAFT

Florida Department of Environmental Protection

Model Ordinance for Installation, Maintenance, and Operation of Sensing Devices on Automatic Landscape Irrigation Systems

December 14, 2009

INTRODUCTION

The 2009 Florida Legislature amended Section 373.62, Florida Statutes, to modify the provisions for automatic irrigation systems, including control systems and sensors; to require contractors to perform certain tests and repairs; and to require DEP to create a model ordinance with certain provisions, including penalties. This Model Irrigation Controller Ordinance was developed to implement those statutory changes. Its purpose is to provide a model for local governments to use in developing local ordinances to implement the statute.

This model ordinance, though written as a stand-alone ordinance, is closely related to the January 2009 *Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions* developed by the Department of Environmental Protection and the University of Florida. The Florida-Friendly guidance models are undergoing revision, but on a slower track than this irrigation ordinance. It is anticipated that, at some future date, the irrigation controller ordinance will be considered for integration into the more inclusive Florida-Friendly guidance models.

TITLE

AN ORDINANCE OF THE (MUNICIPALITY/COUNTY OF) AMENDING OR REPLACING ORDINANCE NO.(s)_ _ OF THE GENERAL REGULATIONS BY REQUIRING REGULATION OF CONTRACTORS THAT PERFORM WORK ON IRRIGATION SYSTEMS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR AMENDMENT OF EXISTING REGULATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR ENFORCEMENT AND PROVIDING AN EFFECTIVE DATE.

FINDINGS

WHEREAS, Section 376.62, F.S. requires the proper installation, maintenance, and operation of technology that inhibits or interrupts the operation of automatic irrigation systems during periods of sufficient moisture, and encourages the adoption of ordinances enforcing such provisions; and

WHEREAS, the (Municipality/County) recognizes the need for the efficient use of water as a natural resource through the use of such technology on automatic irrigation systems; and

WHEREAS, the (Municipality/County) recognizes that water conservation in the landscape can be enhanced through the use of such technology on automatic irrigation systems; and

WHEREAS, proper installation, maintenance and operation of such devices on automatic irrigation systems can save significant amounts of water to preserve local water resources; and

WHEREAS, the cumulative benefits of irrigation control devices may reduce or postpone the need for a community to expand potable water supplies;

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

SHORT TITLE

This ordinance shall be known and may be referred to as the (Municipality/County of _____) Ordinance for Installation, Maintenance, and Operation of Sensing Devices on Automatic Landscape Irrigation Systems.

AUTHORITY

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

ADMINISTRATIVE STANDARDS

Whenever, in the course of administration and enforcement of this ordinance, it is necessary and desirable to make any administrative decision, then, unless other standards are in this Ordinance, the decision shall be made so that the result will not be contrary to the spirit and purpose of this ordinance or injurious to the surrounding neighborhood or the community at large.

PURPOSE AND INTENT

This Ordinance requires the proper installation, repair, and operation of moisture sensing devices on automatic lawn and landscape irrigation systems by licensed contractors and property owners or managers, provides for licensing of contractors that work on such irrigation systems, and provides penalties.

DEFINITIONS

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

1. "Licensed Contractor" shall mean any person licensed or registered under chapter 489, Florida Statutes, or authorized under any county or municipal license or tax certificate to design, install, repair, maintain, or adjust a landscape irrigation system within the jurisdiction of (Municipality/County).
2. "Soil Moisture Sensor" means a soil-based device that assesses the available plant soil moisture in order to minimize the unnecessary use of water and optimize the effectiveness of an irrigation system.
3. "Rain Sensor" means a low voltage electrical or mechanical component placed in the circuitry of an automatic landscape irrigation system that is designed to restrict operation of a sprinkler controller when precipitation has reached a pre-set quantity.
4. "Evapotranspiration-based (ET) controller" means a controller that calculates soil moisture from known weather and related inputs. An ET-based controller:
 - a. Receives and monitors weather data or on-site environmental conditions including, but not limited to, solar radiation, wind speed, temperature, relative humidity, rainfall, and soil moisture; and
 - b. Calculates or determines the amount of moisture input to and moisture lost from the soil and plants; and
 - c. Automatically creates or adjusts the irrigation schedule to apply only the amount of water that is necessary to maintain adequate soil moisture.
5. "Person" means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

APPLICABILITY

This Ordinance shall apply to all licensed contractors within the jurisdiction of (Municipality/County) who install or perform work on automatic irrigation systems, and to any person who purchases, installs or operates an automatic landscape irrigation system on their property.

[Guidance: Local government may adopt additional or more stringent provisions to the model ordinance.]

General Provisions

[Guidance: In 2009, Section 373.62, Florida Statutes, was amended to add provisions requiring installation, maintenance, and operation of technology that interrupts the operation of automatic irrigation systems during periods of sufficient soil moisture.]

1. In accordance with section 373.62(1), Florida Statutes, devices, such as soil moisture sensors, evapotranspiration-based controllers or rain sensors, shall be required on automatic irrigation systems to prevent irrigation during periods of sufficient moisture. Any person who purchases, installs or operates an automatic landscape irrigation system on their property must properly install, maintain, and operate, in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture.
 - a. In accordance with section 373.62(2), Florida Statutes, a licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and insure that each is operating properly before completing other work on the system.
 - b. In accordance with section 373.62(3)(a) and (b), Florida Statutes, a licensed contractor performing work on an automatic landscape irrigation system shall report systems that are not in compliance with section 373.62, Florida Statutes, to the (appropriate city/county authority). Failure of a contractor to report non-compliant systems within five business days is punishable by fines as specified in the Violations and Penalties

section of this ordinance. A system that is repaired by the contractor is brought into compliance and need not be reported.

- c. In accordance with section 373.62(3)(b), Florida Statutes, regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of section 373.62, Florida Statutes, or this ordinance if such repairs are made within thirty days from the time non-compliance is noted.

LICENSING OF CONTRACTORS PERFORMING WORK ON IRRIGATION SYSTEMS

All contractors performing work on irrigation systems within the (un)incorporated area of (Municipality/County), shall be licensed or registered under chapter 489, Florida Statutes, or hold a county or municipally-issued license or business tax certificate that permits work on irrigation systems.

VIOLATIONS AND PENALTIES

[Guidance: Fines in this section reflect the minimum penalty suggested in section 373.62(3)(b), Florida Statutes. Local governments should consider making penalties consistent with their other fines and penalties.]

[Guidance: Though beyond the scope of the model ordinance required by section 373.62(3), a local government may also wish to consider fines for system owners or operators who fail to bring systems into compliance. Language similar to the following could be included: Failure of any person who purchases, installs, or operates an automatic landscape irrigation system on their property, or property managed by them, to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture is guilty of a violation of section 373.62, Florida Statutes and this ordinance, and shall be subject to a fine of (insert appropriate penalty).]

Failure of a licensed contractor to report to (appropriate municipal/county authority) automatic landscape irrigation systems that are not in compliance with this ordinance and section 373.62, Florida Statutes, which requires properly operating devices to inhibit or interrupt the operation of the irrigation system during periods of sufficient moisture, shall be subject to a fine of not less than \$50.00 for a first offense, \$100.00 for a second offense, and \$250.00 for a third or subsequent offense. Funds generated by penalties imposed under this section shall be used by (Municipality/ County) for the administration and enforcement of section 373.62, Florida Statutes, and the corresponding sections of this ordinance, and to further water conservation activities.

CONFLICTS AND RELATIONSHIP TO OTHER LAWS

Whenever regulations or restrictions imposed by this ordinance conflict with other ordinances or regulations, or are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose the highest standards or requirements shall govern.

SEVERABILITY

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

INCLUSION IN CODE, CODIFICATION, SCRIVENERS ERRORS

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

REPEAL

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

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

EFFECTIVE DATE

This ordinance shall take effect _____, 20____.

PASSED ON FIRST READING _____ (Date)

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

(Signature) (Name)
Mayor-Commissioner or Chairman

Attest:

(Signature)(Name)

City Clerk or Clerk of Circuit Court

Approved as to form and correctness:

_____ *(Signature)(Name)*

City or County Attorney

DRAFT

Irrigation Standards for Landscape Irrigation in Florida

(Note: Placeholder: Graphic Designer to insert actual document as printed, not recreate from text.)

Committee on Landscape Irrigation and Florida-Friendly Design Standards (Section 373.228, F.S.)

October 2006

Northwest Florida Water Management District	Southwest Florida Water Management District
St. Johns River Water Management District	South Florida Water Management District
Suwannee River Water Management District	Florida Department of Environmental Protection
Florida Department of Agriculture and Consumer Services	Florida Department of Transportation
Florida Association of Counties	Florida League of Cities
Institute of Food and Agricultural Sciences at the University of Florida	Florida Nursery, Growers and Landscape Association
Florida Chapter of the American Society of Landscape Architects	Florida Irrigation Society
Florida Association of Community Developers	

Overview

Up to one-half of public water supply in Florida is devoted to landscape irrigation. Given Florida's limited water resources, in combination with a rapidly growing population, wise irrigation practices will play an essential role in providing a sustainable water future for our state. Proper landscape design and irrigation system standards can help save significant amounts of water and money, and achieve both attractive landscapes and protection of our natural resources. Section 373.228, Florida Statutes (Attachment I) recognizes these issues, and directs the following parties to work together to improve landscape irrigation and design standards:

- The five water management districts (Northwest Florida, Suwannee, Southwest Florida, South Florida, and St. Johns River Water Management Districts).
- Florida Nursery, Growers and Landscape Association.
- Florida Chapter of the American Society of Landscape Architects.
- Florida Irrigation Society.
- Florida Department of Agriculture and Consumer Services.
- Institute of Food and Agricultural Sciences at the University of Florida.
- Florida Department of Environmental Protection.
- Florida Department of Transportation.
- Florida League of Cities.
- Florida Association of Counties.
- Florida Association of Community Developers.

The Committee on Landscape Irrigation and Florida-Friendly Design Standards was formed to carry out the provisions of section 373.228(4), F.S. The Committee recognizes that it builds on the many major efforts previously made to improve landscape and irrigation design in Florida, including:

- Florida Green Industries Best Management Practices for Protection of Water Resources in Florida (June 2002, Florida Department of Environmental Protection)
- Florida Irrigation Society Standards (<http://www.fisstate.org/standards.htm>)
- Turf and Landscape Best Management Practices (The Irrigation Association, April 2002)
- Guide to Florida Friendly Landscaping (Florida Yards and Neighborhoods Handbook, 3rd Edition, 2006)
- Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes (Florida Department of Environmental Protection)

- Florida Irrigation Society Standards and Specifications for Turf and Landscape Irrigation Systems (5th Edition, December 1, 2005)

These recommendations comply with the Legislative requirement that:

- The landscape and irrigation design standards shall be based on the irrigation code defined in the Florida Building Code, Plumbing Volume, Appendix F.
- Local governments shall use these Standards when developing landscape irrigation and Florida-Friendly ordinances. (Section 373.228(4), F.S.)

The first section of this report comprises the “Standards” developed by consensus by the Landscape Irrigation Committee to be used by local governments when developing landscape irrigation and Florida-Friendly ordinances

The Committee also makes specific recommendations to agencies and other entities to aid in the implementation of the Standards. The last recommendation addresses the development of scientifically based Guidelines for urban, commercial, and residential landscape irrigation.

Definitions

Automatic System: An irrigation system which operates following a preset program entered into an automatic controller. (Source: Appendix F of the Plumbing Volume of the Florida Building Code.)

Controller: The timing mechanism and its mounting box. The controller signals the automatic valves to open and close on a pre-set program or based on sensor readings. (Source: Appendix F of the Plumbing Volume.)

Emitters: Devices which are used to control the discharge of irrigation water from lateral pipes. (Source: Modified from Appendix F of the Plumbing Volume.)

Florida Friendly: Describes practices, materials, or actions that help to preserve Florida’s natural resources and protect the environment. (Source: FDEP, Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes.)

Head: A sprinkler head that provides above ground or overhead irrigation. Also known in the industry by such terms as rotor, spray head, mist head, and impact sprinkler. Sometimes used interchangeably with and in conjunction with “Sprinkler.” (Source: Adapted from Appendix F of the Plumbing Volume.)

High Water Use Hydrozone: A distinct grouping of plants that require supplemental water on a regular basis throughout the year. (Source: Adapted from FDEP, Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes.)

Hydrozone: A distinct grouping of plants with similar water and irrigation needs and climatic requirements. (Source: Adapted from FDEP, Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes.)

Landscape Irrigation: Application of water to a landscape by artificial means, that is, means other than natural precipitation. (Source: Adapted from Appendix F of the Plumbing Volume.)

Microirrigation: The application of small quantities of water directly on or below the soil surface, usually as discrete drops, tiny streams, or miniature sprays through emitters placed along the water delivery pipes (laterals). Microirrigation encompasses a number of methods or concepts including drip, subsurface, microbubbler, and microspray irrigation, previously referred to as trickle irrigation, low volume, or low flow irrigation. (Source: Adapted from F.I.S. Standards and Specifications for Turf and Landscape Irrigation Systems and FDEP, Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes.)

Native Vegetation: Any plant species with a geographic distribution indigenous to all, or part, of the State of Florida as identified in: Wunderlin, R. P. 1998. Guide to the Vascular Plants of Florida. University Press of Florida, Gainesville. (Source: FDEP, Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes.)

Standards

These landscape and irrigation design Standards shall be used by local governments when developing landscape irrigation and xeriscape (Florida-Friendly) ordinances, pursuant to section 373.228, F.S.

- I. Landscape and Xeriscape (Florida-Friendly) Design Standards
 - A. Low impact site design practices, such as preserving existing native trees and vegetation, shall be used if feasible. Where established natural vegetation is incorporated into the landscape design, irrigation of those areas shall not be required.
 - B. The plant palette and irrigation system shall be appropriate for site conditions, taking into account that, in some cases, soil improvement can enhance water use efficiency.
 - C. Plants shall be grouped together by irrigation demand.
 - D. The percentage of landscaped area in irrigated high water use hydrozones should be minimized. Local government ordinances shall address the percentage of irrigated landscaped area that may be included in high water use hydrozones. These high water use limits should not apply to landscaped areas requiring large amounts of turf for their primary functions, e.g., ballfields and playgrounds.
- II. Irrigation System Design Standards

- A. Irrigation systems shall be designed to meet the needs of the plants in the landscape (not the other way around).
- B. When feasible, irrigation systems shall be designed to separately serve turf and non-turf areas.
- C. The irrigation system plans and specifications shall identify the materials to be used and the construction methods.
- D. The design shall consider soil, slope, and other site characteristics in order to minimize water waste, including overspray, the watering of impervious surfaces and other non-vegetated areas, and off-site runoff.
- E. The system shall be designed to minimize free flow conditions in case of damage or other mechanical failure.
- F. The system shall be designed to use the lowest quality water feasible.
- G. Rain switches or other devices, such as soil moisture sensors, to prevent unnecessary irrigation, shall be incorporated. (Section 373.62, F.S.)
- H. A recommended seasonal operating schedule and average precipitation rates for each irrigation zone for both establishment and maintenance conditions shall be provided.
- I. Control systems shall provide the following minimum capabilities:
 - 1) Ability to be programmed in minutes, by day of week, season and time of day,
 - 2) Ability to accommodate multiple start times and programs,
 - 3) Automatic shut off after adequate rainfall,
 - 4) Ability to maintain time during power outages for a minimum of three days, and
 - 5) Operational flexibility to meet applicable year-round water conservation requirements and temporary water shortage restrictions.
- J. Recommended maintenance activities and schedules shall be included.
- K. Precipitation rates for sprinklers and all other emitters in the same zone shall be matched, except that microirrigation emitters may be specified to meet the requirements of individual plants.
- L. Irrigation systems shall be designed to maximize uniformity, considering factors such as:
 - 1) Emitter types.

- 2) Head spacing.
 - 3) Sprinkler pattern.
 - 4) Water pressure at the emitter.
- M. Irrigation systems with main lines larger than two inches or designed to supply more than seventy gallons per minute shall incorporate a means to measure irrigation water use, at a minimum of ninety-five percent accuracy across the flow range.
- N. Irrigation system plans and specifications shall require the system installer to conduct final testing and adjustments to achieve design specifications prior to completion of the system and acceptance by the owner or owner's representative.
- O. Irrigation system plans and specifications shall require that the installer provide property owners and users with post-construction documentation, including as-constructed drawings, recommended maintenance activities and schedules, operational schedule, design precipitation rates, instructions on adjusting the system to apply less water after the landscape is established, maintenance schedule, water source, water shut-off method, and the manufacturer's operational guide for their irrigation controller. To the extent feasible, similar information should be made available for subsequent property transfers.

Recommendations

Recommendation 1: For Local Governments

When developing landscape irrigation and Florida-Friendly landscape ordinances (section 373.228(4), F.S.), local governments shall use the Standards and should also consider the additional issues discussed below.

The Standards are intended to be used by local governments. Even when following the Standards, local governments retain substantial flexibility in implementation. A local government developing such ordinances should address important issues such as:

- Threshold of "new" construction. The Standards should apply to all new construction, as well as modifications that are significant enough that the most current standards should apply. Local governments must decide on the type of change for which these Standards would become applicable, such as:
 - o Dollar amount of expenditure for construction or modification of irrigation system.
 - o Installation or substantial modification (percentage change) of an automatic irrigation system.
 - o Change in irrigated landscape.

- o Percent change in amount of water applied.
- o Percentage change in emitters.
- Nature of the local permitting program, including staffing levels, staff training, fee structure, review process, etc.
- Desirability of local requirements for certification or licensure of irrigation and landscaping contractors and installers.
- Compliance mechanisms, such as plan review, inspections, compliance reviews, or certification that the system was installed as designed, before issuance of a Certificate of Occupancy.
- Mechanisms to ensure that homeowners receive effective and user-friendly guidance on the operation of their automatic irrigation system.
- Coordinating the design and efficiency of individual homeowner irrigation systems with sources of supply that serve more than one home.
- Local education programs to promote efficient landscape irrigation. Local governments are also encouraged to promote the distribution of educational materials, such as those from the Florida Yards and Neighborhoods Program.
- Percentage of total landscaped area that may be included in high water use hydrozones. These high water use limits should not apply to landscaped areas requiring large amounts of turf for their primary functions, e.g., ballfields and playgrounds.

Carefully considering these issues and designing a program that meets local needs will help ensure the effectiveness of any landscape or Florida-Friendly ordinance.

Recommendation 2: For the Florida Department of Community Affairs (*Note, 2013. The Florida Legislature eliminated the Department of Community Affairs in 2011.*)

The Department of Community Affairs should consider the Standards in assisting in the local government comprehensive planning process.

Effective use by local governments of the Standards can affect future demand for water. In 2005, the Florida Legislature made significant changes to Chapters 163 and 373, F.S., to strengthen the link between land use and water supply planning. The legislative changes encourage cooperation in the development of alternative water supplies and reemphasize the need for conservation and reuse. The changes help to ensure that the local government's future land use plan (future land use element and future land use map) is based upon the availability of adequate water supplies, and the inclusion of selected alternative water supply projects in the local comprehensive plan.

Local governments must now consult with the applicable water supplier when issuing a building permit to ensure that an adequate water supply will be available to serve the development no later than the anticipated date of issuance by a local government of a certificate of occupancy. In addition, the 2005 Growth Management laws (Senate Bills 360 and 444) require that local governments adequately plan for future water needs by requiring close coordination between water management districts' regional water supply plans and the potable water element of local government comprehensive plans. Local plans must include a work plan for building public, private and regional water supply facilities to meet projected needs and must identify alternative water supply projects, including conservation and reuse, necessary to meet the water needs identified within the local government's jurisdiction.

In addition, the comprehensive plan Evaluation and Appraisal Report must address the extent to which the local government has implemented the work plan for building public, private and regional water supply facilities, including the development of alter-native water supplies. The report must also include a determination as to whether the identified alternative water supply projects, traditional water supply projects, and the conservation and reuse programs have met local water use needs.

The Department of Community Affairs can use the Standards in at least three different ways:

1. Promoting awareness of the Standards among Department staff and local government partners. This would help implement the Standards on a voluntary basis as local governments understand better which actions can effectively promote water use efficiency and natural resource protection.
2. Using the Standards in the Evaluation and Appraisal Report process. The Department of Community Affairs, with input from the Department of Environmental Protection or the applicable water management district, a Regional Planning Council, or a local government, should identify the need for water conservation and water resource protection in the planning process. Once this issue has been identified in the EAR process, the Standards could serve as a technical assistance tool for local governments as they address the issue.
3. Using the Standards in reviewing amendments to local government comprehensive plans. When reviewing draft proposals to amend a plan, the Department of Community Affairs, with input from the Department of Environmental Protection or the applicable water management district, could use the Standards to help determine if the amendments address satisfactorily the need to promote water use efficiency and natural resource protection. For example, if a local government is proposing to adopt an ordinance to promote irrigation efficiency, or Florida-Friendly landscape design, the Standards can be used by the Department of Community Affairs as a starting point for items that should be considered during the ordinance development process. (See also Recommendation 1. for Local Governments on related decisions a local government must make when adopting such ordinances.)

Recommendation 3: For the Water Management Districts

The five Water Management Districts should consider these recommendations in reviewing water use permit applications for public water supply to determine if efficient use of water is being proposed (section 373.223, F.S.).

Under Florida water law, the water management districts can issue a water use permit only if the proposed withdrawal is a “reasonable-beneficial use” which means “in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest” (sections 373.019(16) and 373.223(1), F.S.). The water management districts already review proposed withdrawals for public water supply in regard to promoting efficient irrigation.

In the future, the water management districts, in determining if a water use applicant proposes to use water efficiently, should consider if a public water supplier has adopted local ordinances that are consistent with the Standards. (This permitting function of the water management districts is in addition to their role in assisting DCA in the comprehensive plan reviews described in the previous recommendation.)

Recommendation 4: For the Conserve Florida Program

The water conservation Guide for public water supply required by section 373.227, F.S., should be revised appropriately to reflect the standards developed by the Committee.

The Conserve Florida water conservation program for public water supply has developed an on-line water conservation planning and reporting Guide for local utilities to use in developing water conservation programs. The Clearinghouse and Guide (housed at the University of Florida) already address the development of local landscape and irrigation ordinances and programs but should be updated to consider the Standards in this report. (section 373.227, F.S.)

Recommendation 5: For developing scientifically based model guidelines for urban, commercial, and residential landscape irrigation

The Committee members should continue to work to develop and improve the scientifically based guidelines.

Much progress in developing scientifically based guidelines has already been made, including work already underway on the irrigation needs of turf and shrubs. Florida Yards and Neighborhoods, the Green Industries BMPs, Model Ordinances prepared by water management districts, and other documents, are other examples of this effort.

More attention should be focused on developing and publishing usable summaries of the research in a format accessible to local governments. This will require multiparty collaboration, as well as some additional research. The water management districts, DEP and others should collaborate to identify areas of needed research, which should address both the “plant side” and the “pipe side” of irrigation. Some of the high priority future research topics identified include:

- Irrigation needs of landscape plants and turf.
- Improvement in technology for functional and inexpensive soil moisture sensors.
- Improvements in mobile irrigation labs.
- Development of telemetry and evapotranspiration-based control of irrigation.
- Breeding of water-efficient landscape plants and turf.

One possible forum for developing the research agenda is the new Conserve Florida Clearinghouse, which includes that function among its purposes.

DRAFT

Attachment I: Section 373.228, F.S. Landscape Irrigation Design.

373.228 Landscape irrigation design.--

- (1) The Legislature finds that multiple areas throughout the state have been identified by water management districts as water resource caution areas, which indicates that in the near future water demand in those areas will exceed the current available water supply and that conservation is one of the mechanisms by which future water demand will be met.
- (2) The Legislature finds that landscape irrigation comprises a significant portion of water use and that current typical landscape irrigation systems and Florida-friendly landscaping designs offer significant potential water conservation benefits.
- (3) It is the intent of the Legislature to improve landscape irrigation water use efficiency by ensuring that landscape irrigation systems meet or exceed minimum design criteria.
- (4) The water management districts shall work with the Florida Nursery, Growers and Landscape Association, the Florida Native Plant Society, the Florida Chapter of the American Society of Landscape Architects, the Florida Irrigation Society, the Department of Agriculture and Consumer Services, the Institute of Food and Agricultural Sciences, the Department of Environmental Protection, the Department of Transportation, the Florida League of Cities, the Florida Association of Counties, and the Florida Association of Community Developers to develop landscape irrigation and Florida-friendly landscaping design standards for new construction which incorporate a landscape irrigation system and develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping. The standards shall be based on the irrigation code defined in the Florida Building Code, Plumbing Volume, Appendix F. Local governments shall use the standards and guidelines when developing landscape irrigation and Florida-friendly landscaping ordinances. By January 1, 2011, the agencies and entities specified in this subsection shall review the standards and guidelines to determine whether new research findings require a change or modification of the standards and guidelines.
- (5) In evaluating water use applications from public water suppliers, water management districts shall consider whether the applicable local government has adopted ordinances for landscaping and irrigation systems consistent with the Florida-friendly landscaping provisions of s. [373.185](#).

History.--s. 6, ch. 2004-381; s. 13, ch. 2008-150; s. 19, ch. 2009-243.

COVENANTS AND RESTRICTIONS FOR PRIVATE PROPERTY

**Florida-Friendly Landscaping Model Covenants, Conditions and Restrictions
for New and Existing Community Associations**

DRAFT

**FLORIDA-FRIENDLY LANDSCAPING™
MODEL COVENANTS, CONDITIONS AND
RESTRICTIONS FOR NEW AND EXISTING
COMMUNITY ASSOCIATIONS**



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I. Introduction and Overview

Residential development has been a major factor in Florida's economy for decades, and much of that development has taken the form of master-planned communities administered by a mandatory homeowners' association ("HOA") and set of documents promulgated by the developer or the HOA that may include a declaration of covenants, conditions, and restrictions ("CCRs"); articles of incorporation; bylaws; rules and restrictions; and architectural standards (collectively, "HOA Documents"). Millions of Floridians currently live in such communities,³ and most new residential development is likely to take the same form. Unfortunately, HOA Documents that govern both new and existing communities rarely contain restrictions that reflect and permit sustainable approaches to the establishment and maintenance of landscapes.

Recognizing the importance of permitting sustainable landscaping in these communities, the Florida legislature enacted a series of provisions in 2009 that updated the definition of "Florida-friendly landscaping" and authorized the use of such landscaping—even when it has the potential to conflict with existing HOA Documents. Accordingly, it is in the best interests of developers, HOA boards, and homeowners alike to incorporate Florida-Friendly Landscaping™ principles into HOA Documents as they are created or amended to provide clear guidance about permitted landscaping in the community. This report provides background information about Florida-Friendly Landscaping™, explores legal issues related to the 2009 legislative enactments, and discusses several concerns related to implementing Florida-Friendly Landscaping™ principles in HOA Documents. Two sets of model provisions are provided—one for new communities and one for existing communities.

This report is the result of a joint project between the University of Florida's Institute of Food and Agricultural Sciences ("IFAS") and the Florida Department of Environmental Protection ("FDEP"). It was drafted and revised by the Conservation Clinic at the University of Florida's Levin College of Law ("Conservation Clinic"), with contributions by Carlton Fields, P.A., FDEP and the Florida-Friendly Landscaping™ Program's Florida Yards & Neighborhoods Program. This report is not intended to confer legal advice. Developers, HOAs, and homeowners should consult with an attorney before adopting the model provisions provided herein or adapting their landscaping practices in reliance on the 2009 legislation described in this report.

II. Background

A. Residential Development and Conservation

Given the tremendous population explosion in Florida over the past half-century and the inevitability of continued land development in the state, it is imperative for Floridians to find a way to coexist with the natural environment. The alternative is permanent loss of valuable resources such as pristine waters and native species. To protect Florida's fragile environment,

³ Florida does not regulate HOAs and there is no central repository for information in regards to their numbers. However, a 2007 Florida Senate report used National data to estimate that 4 to 6 million Florida Homeowners live in approximately 27,000 HOAs. OPPAGA issued a report in February 2010 concluding that there are at least 14,300 Mandatory HOAs within the state (Report 10-20)

developers, HOAs, and homeowners must understand and address the environmental impact of their land use decisions. By minimizing their adverse impacts on the environment, these individuals and organizations can make a positive difference in preserving Florida's natural resources.⁴

As discussed in the introduction to this document, millions of Floridians already live in communities governed by an HOA, and that number is likely to continue to grow. Research has shown that few conservation-oriented provisions exist within existing HOA Documents, perpetuating the practices of unnecessary irrigation, and excessive fertilizer use that contribute to water quantity and quality problems.⁵ Specifically, one recent study shows that there is a strong link between HOA landscaping practices and nutrient pollution in stormwater.⁶

By incorporating Florida-Friendly LandscapingTM principles into HOA Documents, developers, HOAs, and homeowners can begin addressing these environmental concerns and bring those documents into compliance with the recent legislative changes discussed in more detail in the following section. Moreover, this can be accomplished without comprising values such as aesthetics and uniformity that are the basis of HOA landscaping standards. This report provides model provisions to achieve that goal for new developments, as well as for older developments that do not have environmentally sustainable landscaping and related provisions in their original documents. By informing HOAs of simple conservation methods that can be incorporated into their documents, the authors hope that the number of associations that adopt and follow these methods will increase.

HOAs may use all or part of the model Covenants, Conditions and Restrictions. To be considered "Florida-Friendly," communities must use maintenance contractors whose employees are trained in the Green Industries Best Management Practices program,⁷ have maintenance contracts that reflect Green Industries Best Management Practices, and provide education to their property managers and residents about Florida-Friendly LandscapingTM design and maintenance practices at regular intervals—at least once per year. In addition, new communities must address the issues in sections 3 – 6 (Section V) in their CCRs, and existing communities must address the issues in sections 2-4 (Section VI). Existing communities may have only their common and managed areas certified as Florida-Friendly if they are unable to amend their CCRs, provided they have contracts, bylaws or written policies in place to require the practices.⁸

⁴ Florida Yards & Neighborhoods Handbook, *A Guide to Environmentally Friendly Landscaping*, 2 (2010).

⁵ Using Science to Influence Policy: Spatial Analysis Comparing Residential Lawn Care Practices and Localized Water Pollution, Leesa Souto, UCF Stormwater Academy

⁶ Id.

⁷ Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agricultural applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

⁸ Florida-Friendly LandscapingTM Program policy, based on Fla. Stat. §403.9337, §403.9338 FS, and FDEP Florida-Friendly LandscapingTM Model Ordinance (2010).

B. Statutory Changes to Encourage Florida-Friendly Landscaping™

Florida law defines the term "Florida-Friendly Landscaping"™ in Section 373.185(1)(b), Florida Statutes:

“Florida-friendly landscaping” means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.

This statutory definition mirrors the principles of the Florida-Friendly Landscaping™ Program, which states that a Florida-friendly landscape is one where the right plants are in the right place, watering is done efficiently, fertilizing is done appropriately, mulch is used, wildlife is attracted, yard pests are managed responsibly, yard waste is recycled, stormwater runoff is significantly reduced, and the waterfront is protected from pollutants.⁹

Perhaps more importantly, Section 720.3075(4)(b), Florida Statutes (“FF HOA Law”) was enacted in 2009 and provides:

Homeowners’ association documents, including declarations of covenants, articles of incorporation, or bylaws, may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping, as defined in s. 373.185, on his or her land or create any requirement or limitation in conflict with any provision of part II of chapter 373 or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373.

Therefore, existing communities with potentially conflicting landscaping requirements should revise their documents to ensure that applicable provisions do not violate the FF HOA Law—and more importantly, do not cause confusion for homeowners about landscaping requirements for their lot.

C. Introduction to Model Declaration Provisions

The previous version of this report outlined the first concise guidelines to developers interested in incorporating Florida-Friendly Landscaping™ practices into site plans and HOA Documents. Adding these provisions into the community’s declaration of covenants makes them enforceable as the “law” of the community, and that creates certainty throughout the lifetime of the project. Therefore, a developer and the homeowners may have confidence that a project

⁹ Florida Yards & Neighborhoods Handbook 3rd Edition, *A Guide to Florida-Friendly Landscaping* (3rd ed. 2006).
The Florida Yards & Neighborhoods Handbook 4th Edition. (4th ed. 2009)

intended to be marketed and sold as “Florida-friendly” will retain many of the environmental characteristics that attracted buyers in the first place.¹⁰

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

These model provisions may be used by developers or HOAs to incorporate Florida-Friendly Landscaping™ principles into the HOA Documents that govern their communities. The updated model language is divided into two forms to make these model provisions more accessible to both new and existing communities. The first form, found in Part V of this document, is intended to be used by developers as guiding principles when drafting initial restrictive covenants or, as they are commonly known, the Declaration of Covenants, Conditions and Restrictions (“CCRs”). The second form, found in Part VI of this document, is intended for associations that wish to modify their existing landscaping provisions to be consistent with the FF HOA Law, which now has retroactive application.

III. Legal Issues

A. Retroactive Application and the Contract Clause of the Florida Constitution

The FF HOA Law purports to have retroactive applicability such that no HOA Document—regardless of when it was created—may prohibit a homeowner from installing Florida-Friendly Landscaping™. The express or implied retroactivity of a statute always requires a careful scrutiny from the standpoint of constitutionality. The Florida Constitution, Article I, Section 10 prohibits the passing of laws “impairing the obligation of contracts” (“Contract Clause”). Therefore, Florida laws may be declared invalid if they impair the rights of those who have made existing contracts—which can be problematic for laws that have retroactive reach. Although courts have strictly applied the restriction on the impairment of contracts in the past, they have also exempted laws when there is an “overriding public necessity for the state to exercise its police powers.”¹¹ So, the Contract Clause does not “prohibit the state from enacting legislation with retroactive effect,”¹² but rather, courts must look at the purpose of

¹⁰ *But see* Patrick A. Randolph, Jr., *Symposium: Common Interest Development Communities: Part II: Changing the Rules: Should Courts Limit the Power of Common Interest Communities to Alter Unit Owners’ Privileges in the Face of Vested Expectations?*, 38 Santa Clara L. Rev. 1081, 1105 (1998) (noting that courts do not protect an expectation that a development within a subdivision will remain unchanged, but rather only assure that the changes will be uniform in application).

¹¹ *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980)

¹² *Yellow Cab C. v. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982)

the law. Legislation that restricts the right to contract will not be invalid if the restriction is intended as “reasonable and necessary to serve an important public purpose,”¹³ which may include protection of the “public’s health, safety or welfare.”¹⁴

Accordingly, when laws that may impair existing contracts are passed, courts have attempted to reach a compromise between individual rights and public welfare.¹⁵ Courts have applied this compromise as a balancing test, weighing the “nature and extent of the impairment is constitutionally tolerable in light of our important state objective, or whether it unreasonably intrudes into the parties’ bargain to a degree that is necessary to achieve the objective.”¹⁶

In the FF HOA Law, the Florida Legislature noted that the “use of Florida-Friendly Landscaping and other water use and pollution prevention measures to *conserve or protect the state’s water resources serves a compelling public interest* and that the participation of homeowners’ associations and local governments is *essential to the state’s efforts in water conservation and water quality protection and restoration.*”¹⁷ Because the legislature has found that water conservation through appropriate landscaping technologies serves a compelling public purpose, retroactive application of the FF HOA law appears to be constitutionally appropriate insofar as the prohibition on impairment is concerned. As a result, any HOA that properly amends its governing documents in accordance with the requirements of the HOA Documents and the applicable statutes should be protected from challenges based on impairment of contracts.¹⁸

B. Reasonableness and Judicial Review

Florida-Friendly Landscaping™ provisions of HOA Documents (both new and amended) must be drafted in such a way that they are legally enforceable. Since the FF HOA law is relatively new, courts have not had the opportunity to interpret its meaning. Analogies may be drawn, however, from cases that deal with amending or enforcing restrictive covenants in subjects unrelated to water conservation or landscaping.

Rules included in CCRs at the time a purchaser purchased his or her property are presumed to be valid since the purchaser had adequate notice of HOA Documents before buying a lot and voluntarily chose to purchase lots encumbered by the restrictions in those HOA Documents.¹⁹ Therefore, some provisions included in HOA Documents do not necessarily have to be deemed reasonable since the court will uphold them as long as they are not “clearly ‘ambiguous,’ applied arbitrarily, or violative of public policy or a fundamental constitutional right.”²⁰

¹³ Id.

¹⁴ *Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981)

¹⁵ *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979)

¹⁶ *Park Benziger*, 684-5

¹⁷ Fla. Stat. §373.185(3)(a) (2010) (emphasis added)

¹⁸ Id.; See also *Park Benziger supra* note 9; See also *Yellow Cab supra* note 10.

¹⁹ *Hidden Harbour Estates v. Basso*, 393 So. 2d 637, 639 (Fla. Dist. Ct App. 1981).

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

When dealing with amendments to HOA documents enacted after a purchaser acquired his or her property, however, the reasonableness standard comes into play. Generally, courts are more generous when reviewing amendments voted on by property owners rather than unilateral amendments enacted by the HOA or an equivalent representative group.²¹ The only discernible limitation placed on any covenant amendment seems to be that it must preserve the “basic expectations created in the original scheme” of development.²² Developers may also have retained some power to make unilateral amendments to HOA Documents before control of the HOA is turned over to homeowners, but such power must be exercised in a reasonable manner and must preserve the original scheme of development.²³ Some states have an additional judicial limitation on amendments to the restrictive covenants that requires all property owners have to be affected equally by any modification.²⁴

C. Aesthetic Regulation by Homeowner Associations

HOAs have expressed concern that the FF HOA Law will limit the ability of the HOA to provide aesthetic regulation of the landscaping and yards within the community. It is the position of FDEP and IFAS, that the FF HOA Law does not eliminate the ability of the HOAs to create and enforce aesthetic standards related to landscaping, so long as those decisions or regulations do not violate the accepted practices, procedures and materials outlined in the FF HOA law and mirrored in the Florida-Friendly Landscaping™ Program. It is the hope of FDEP and IFAS, however, that existing HOAs will take advantage of the model provisions included in this document and proactively amend their HOA Documents where necessary in order to promote sustainable landscapes. Such proactive steps can reduce community conflict by providing all homeowners with clear guidance as to Florida-Friendly Landscaping™ principles, while promoting consistency and property values within the community.

IV. Implementing Florida-Friendly Landscaping™ in HOA Documents

Education is the key step in making a good decision—whether you are a Developer, HOA, or homeowner. With the knowledge that comes from education on the relevant issues, informed decisions can be made. This section provides a guideline to the information and further research that may be necessary during the process of creating a CCR document. Finally, it is important to keep timing in mind, as it is much simpler to make changes at some times than at others. All of these elements must be evaluated during this process, in order to create the most effective and flexible document that is easy for all parties to understand, as well as associations to enforce.

A. Education

The annotations and footnotes serve to guide the reader by giving background information or explanations that clarify certain provisions. The goal of achieving environmental

²¹ See *Hidden Harbour Estates*, 393 So. 2d 637 (board adopted lawn watering and well building restriction to control water salinity problem in community); *Nelle v. Loch Haven Homeowners' Ass'n, Inc.*, 413 So. 2d 28 (Fla. 1982)

²² See Randolph, *supra* note 3 at 1119.

²³ *Nelle*, 413 So. 2d at 29.

²⁴ See Randolph, *supra* note 3 at 1103.

impact reductions by using best management practices will be achieved as more communities incorporate provisions such as the ones provided in this document into their own CCRs. A key aspect to achieving this goal is homeowner education in regards to protecting water quality, water savings and other financial savings related to conservation and Florida-Friendly Landscaping™ by the developer or by the community's association.

Given the complexity of the subject and the possibility of new technical data and government regulation in the field of water conservation, landscaping, and pollution prevention, the information provided in this report may need to be supplemented. The IFAS extension office at the University of Florida works diligently to keep up with the latest trends in these fields and should be contacted for more information. UF/IFAS also has offices in counties around the state, which can be located on the web at <http://fyn.ifas.ufl.edu> or <http://FloridaYards.org> or www.SolutionsForYourLife.org/fyn or contacted at (352) 245- 4518. Also, homeowners wishing to obtain additional recommendations for a specific region in Florida may check updated versions of other University of Florida's IFAS publications at <http://edis.ifas.ufl.edu/> or www.SolutionsForYourLife.com.

B. Selecting Provisions to Incorporate

Developers, HOAs, and homeowners should bear in mind that the model Florida-Friendly Landscaping™ provisions in this document are only one approach to enhancing the sustainability of landscaping in Florida. There are many additional effective conservation methods available, and the educational resources described in the previous section may be consulted for additional information on the latest conservation methods and ideas.

This document provides sample language for community landscape regulation that, taken together, establishes a system to effectively implement and enforce Florida-Friendly Landscaping™. By no means is it to be considered a complete CCR or a substitute for formal legal advice. A lawyer should always be consulted in the drafting of important governing documents and changes necessary to accommodate specific site conditions and documents requirements. Drafters should also consult relevant municipal and state laws, which prevail over any of the model language set forth herein. Any language included in a CCR that goes against law or public policy will be deemed invalid.²⁵

C. Timing

Inclusion of Florida-Friendly Landscaping™ provisions is most easily accomplished when HOA Documents are initially drafted by the developer's counsel, and it may also allow the provisions to be coordinated with other environmentally-friendly planning and design efforts by the developer. Inclusion of such provisions may also be accomplished easily prior to turnover of control of an HOA to the homeowners if the developer reserved the right to unilaterally amend the HOA Documents to incorporate such provisions.²⁶

²⁵ 6A Patrick Rohan, *Real Estate Transactions: Home Owner Associations and PUDs – Law and Practice*, §8.00-8.28, (1977).ui6

²⁶ *Nelle*, 413 So. 2d at 29.

Once a developer has turned control of the HOA over to the community's homeowners making changes to HOA Documents becomes significantly more difficult. Following turnover, a developer is prohibited from making unilateral amendments if they had that right initially in the HOA Documents.²⁷ Unless otherwise provided in the HOA Documents, by statute the HOA may only amend the HOA Documents if a quorum is obtained at a properly noticed meeting and a certain percentage of these owners present vote in favor of the amendment at that meeting.²⁸ It is important for an HOA to consult with an attorney to determine what action will be necessary for the board vs. the members of the HOA to enact Florida-Friendly LandscapingTM provisions.

In any event, whenever Florida-Friendly LandscapingTM provisions are incorporated into HOA Documents after the initial drafting—whether by the developer or the HOA—it is important to seek input from homeowners, for it is homeowners that must adhere to the provisions on a daily basis and homeowners that make up the Landscaping Committee that will eventually enforce the provisions. There are many methods to solicit homeowner input, but it may be most effective to use an inclusive, cooperative approach such as a charrette or similar method. Charettes allow all of the parties to work together in order to design a CCR document that would be accepted by the majority of participants.²⁹

²⁷ Fla. Stat. §720.3075(1)(a) (2010)

²⁸ Fla. Stat. §720.306(1) (2010)

²⁹ For more information on the charrette method, please see the National Charrette Institute website at <http://www.charretteinstitute.org/>

V. **Model Provisions for a New Communities**

DECLARATION EXHIBIT
FLORIDA-FRIENDLY DEVELOPMENT
COVENANTS, CONDITIONS
AND RESTRICTIONS

1. Definitions

(Note: The drafter will need to check any existing definitions in the Declaration for consistency with definitions)

1.1 **“Association”** means the corporate entity responsible for operating and maintaining the Common Areas of the Community.

1.2 **“Certified Professional”** means a person who possesses a certificate of completion in the Florida Green Industries Best Management Practices.

1.3 **“Florida-Friendly LandscapingTM”** means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.³⁰

1.4 **“Florida Green Industries Best Management Practices”** includes those practices defined in the most recent version of the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries.

1.5 **“Homeowner”** includes an owner of a Lot or Parcel.

1.6 **“Low Impact Development”** or **“LID”** is development that utilizes stormwater control techniques to control rainfall runoff by utilizing decentralized controls (such as pervious pavement, green roofs, vegetated swales, and infiltration trenches) by allowing water to infiltrate, filter, store, evaporate, percolate and detain, as appropriate, in place using biophysical characteristics of a property.

³⁰ Fla. Stat. §373.185(1)(b) (2010)

1.7 “**Managed Areas**” includes any areas managed but not owned by the Association.³¹

1.8 “**Surface Water Management System**” or “**SWMS**” is defined as the system, which is in place to regulate and control the flow of surface water. The SWMS incorporates methods and facilities to reduce impervious surface, disconnect impervious surfaces, infiltrate, convey, collect, store, retain, detain, absorb, inhibit, treat, use and/or reuse storm water to prevent flooding, overdrainage, environmental degradation and water pollution. The SWMS includes land, easements, improvements, facilities, Low Impact Development elements, and appurtenances.

1.9 “**University of Florida Institute for Food and Agricultural Sciences**” or “**UF/IFAS**” is a federal-state-county partnership dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible. UF/IFAS maintains a website at <http://www.ifas.ufl.edu> and at the website “Solutions for Your Life” at <http://solutionsforyourlife.ifas.ufl.edu/>.

2. Landscaping Committee^{32 33}

2.1 **Definition.** “Landscaping Committee” means a duly appointed committee with delegated authority from the Association to enforce certain parts of this Declaration. The Landscaping Committee will advise the Association on overall environmental protection policy and enforcement issues.

2.2 **Establishment of Landscaping Committee.** The Association will establish a Landscaping Committee. The Landscaping Committee will be made up of Association Members and include at least one Certified Professional. If no Association Member is a Certified Professional willing to serve on the Landscaping Committee, a non-Member Certified Professional may be appointed to the Landscaping Committee by the Association.

2.3 **Appointment of Landscaping Committee Officers.** The Board of Directors of the Association will appoint three members of the Landscaping Committee to serve as officers of the Landscaping Committee. At least one officer must be certified for Florida Green Industries Best Management Practices.³⁴

³¹ In some communities, the Homeowners Association manages privately owned areas. This definition lets the reader know that there is a distinction between common areas and areas not owned but managed by the Home Owner Association.

³² According to Florida Statutes Section 720.305 (2010), a design authority must be specifically stated or reasonably inferred from the written covenants or other published guidelines and standards authorized by the Declaration of Covenants. Therefore, only a new community will be able to establish a Committee if a committee with power to address landscaping. It is important to consult with an attorney to determine the scope of the existing powers of the HOA for these issues.

³³ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

³⁴ This ensures that the committee is aware of appropriate resources available to the development. In the event that no officer with professional knowledge can be found, or the hiring of an officer is not financially feasible, the Committee should work with their local UF/IFAS Extension to ensure that the officers understand the requirements

2.4 **Term of Office.** Upon establishing the Landscaping Committee, the Association will appoint one officer for a term of one year, one Officer for a term of two years, and one officer for a term of three years. All future appointments will be for a term of three years except for appointments to fill an unexpired term left vacant by the previous appointee. Such appointments will be for the unexpired duration of the term being filled.³⁵

2.5 **Compensation and Liability.** An Association Member who serves as a member or officer on the Landscaping Committee will not receive compensation but may be reimbursed for expenses incurred in conjunction with his or her service on the Landscaping Committee. A non-Association Member, appointed to the Landscaping Committee as a Certified Professional pursuant to Section 2.2, is, however, eligible for reasonable compensation for service on the Landscaping Committee, in addition to reimbursement for expenses incurred in conjunction with his or her service on the Landscaping Committee. No member of the Landscaping Committee (whether Association Member or otherwise) will be liable for claims, causes of action, or damages arising out of services performed as a member or officer of the Landscaping Committee.

2.6 **General Duties.**

2.6.1 The Landscaping Committee will design, manage, and maintain the landscape for the development taking into consideration environmental attributes of the development. The Landscaping Committee will make all landscaping and maintenance decisions within the development in accordance with the guidelines set forth in the most current edition of the Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries (“Florida Green Industries BMPs handbook”). Environmental landscaping design and maintenance considerations include, but are not limited to, decisions connected to landscaping, irrigation, pesticide application, fertilization, water conservation, and wildlife conservation.

2.6.2 If a Homeowner desires to make a design change to their property including changes to their landscape or irrigation system, the Homeowner will, prior to making any change, seek approval for such design change by submitting a design change application to the Landscaping Committee. No later than 30 days after the date on which the Homeowner submits a design change application to the Landscaping Committee, the Landscaping Committee will provide written notice to the Homeowner approving or denying the proposed design change. If the Landscaping Committee does not send a response, then the proposed design change is deemed denied. The Landscaping Committee will not approve any proposed design change that fails to conform to the development’s design concept.

2.6.3 No approval will be required for design changes involving the planting of annuals, planting of pre-approved plants or trees, or for the removal of deceased or diseased trees in accordance with the current version of the UF/IFAS Florida-Friendly Landscaping™ Plant

and responsibilities in this document. A list of all of Local UF/IFAS Extensions can be found at: <http://solutionsforyourlife.ufl.edu/map/index.html>.

³⁵ Staggering the terms of office ensures that at least two officers will always have experience dealing with the affairs of the Landscaping Committee.

Selection Guide or pre-approved plant list adopted by the Landscaping Committee from time-to-time (the “Landscaping Committee Approved Plant List”), if applicable.³⁶

2.6.4 The Landscaping Committee will keep, account, and maintain records for all environmental landscaping management and maintenance decisions made by the Landscaping Committee. If a Homeowner submits a written request for documents relating to the management and maintenance of the development’s environmental landscaping, the Landscaping Committee will, within a reasonable time after the date on which it received the request, submit such documents to the Homeowner. The most recent version of the Florida-Friendly Landscaping™ Green Industries Best Management Practices for Protection of Water Resources is incorporated by this reference.³⁷

2.6.5 The Landscaping Committee will manage invasive exotic plant species within Common Areas and Managed Areas.

2.7 **Environmental Landscaping Violations.** If the Landscaping Committee has knowledge that a Property is not complying with the water conservation, landscaping, fertilizing, or pesticide application parts of this Declaration the Landscaping Committee will notify the Homeowner and give ____ days to cure the problem. If the Homeowner does not cure the problem within the allotted time frame, the Landscaping Committee may take reasonable measures to correct this problem, bill the Homeowner for the work performed on the Homeowner’s Property to cure such problem and take any other enforcement actions as provided by this Declaration.

3. Landscaping

3.1 **Florida-Friendly Landscaping™.** The Association may not prohibit any Homeowner from implementing Florida-Friendly Landscaping™ on the Homeowner’s private property in accordance with Florida Statutes Section 373.185 (2010).^{38 39}

3.2 Site Preparation: Soil Testing.

3.2.1 Common Area or Managed Area

³⁶ A community may want to regulate removal of dead trees, also known as snags, allowing them to remain on the property so long as they do not endanger the house or other structures. Snags may provide habitat for and attract birds and other wildlife.

³⁷ This document is available at www.dep.state.fl.us/water/nonpoint/pubs.htm

³⁸ Fla. Stat. §720.3075(4)(b) (2010)

³⁹ HOAs may use all or part of the model Covenants, Conditions and Restrictions. To be considered “Florida-Friendly,” communities must use maintenance contractors whose employees are trained in the Green Industries Best Management Practices program, have maintenance contracts that reflect Green Industries Best Management Practices, and provide education to their property managers and residents about Florida-Friendly Landscaping™ design and maintenance practices at regular intervals—at least once per year. In addition, new communities must address the issues in sections 3 – 6 (Section V) in their CCRs. Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agricultural applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

(a) **Topsoil.** For all newly developed areas, the Developer or the Association, as applicable, will keep existing topsoil onsite, making sure that it is not buried under additional fill but spread on top of imported fill where possible throughout the development.

(b) **Soil Testing.** Before landscape installation starts on all areas on which the Developer, or Association, as applicable, intends to install landscaping, the Developer or Association, as applicable, will, after site preparation and final grading, obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.⁴⁰ The Developer will make this information available to the Association as part of the Association Official Records. If after turnover of control to the Association, the Association intends to install new landscaping in the Common Areas or Managed Areas it may only do so if the soil testing information on file for that lot is less than ___ years old. If the soil tests on file for the lot where new landscape will be installed are more than ___ years old, the Association will obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility.

3.2.2 **Lot Soil Testing.** Prior to installation of initial landscaping on a Lot, the Lot Owner, whether Homeowner, Developer or other party, must obtain soil analysis information from a reputable soil testing lab or the UF/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.⁴¹

3.3 Design and Layout for Common Areas and Managed Areas

3.3.1 **Florida-Friendly.** The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Developer or Association, as applicable, will ensure that the design the landscape so that plants will serve environmentally friendly functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the Community.⁴²

3.3.2 **Existing Native Vegetation.** The Association will preserve and enhance host and nectar vegetation that attracts pollinators and provides food, shelter and habitat for a

⁴⁰ An analysis of soil infiltration rate is also recommended but implies extra costs. For soil testing recommendations and information see the Soil and Water Science Department, Florida Cooperative Extension Service, University of Florida/IFAS at <http://edis.ifas.ufl.edu/SS156>.

⁴¹ *Id.*

⁴² Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010); For more information, please see “Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape”, Hansen, et al. 2009. This document is ENH1135, one of a series of the Environmental Horticulture Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. Original publication date, September 2009. Visit the EDIS Web site at <http://edis.ifas.ufl.edu>. Written by: Gail Hansen, assistant professor, Environmental Horticulture Department; Jennifer Ramos, courtesy extension agent I, E.A. Felter, extension agent II, and Celeste White, courtesy extension agent I, Orange County, Orlando, FL, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

variety of wildlife.⁴³ The Association will preserve and enhance existing butterfly host vegetation located in preserves, easements, roadsides, undeveloped lots, vegetative buffers, around stormwater ponds, retention areas, Common Areas, and Managed Areas.

3.3.3 Landscaping Selection. In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Guide to Plant Selection and Landscape Design, the Developer or Association, as applicable, will ensure the selection of landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Community must have at least ten species of plants within its Common Areas or Managed Areas. The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Florida Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not invasive exotics. By the same token, many plants that are listed may be unsuitable in some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

3.3.4 Turfgrass.

(a) Association will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (i) selection of grasses that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (ii) use of Integrated Pest Management (IPM) in selection of pesticides. Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

(b) Functional turfgrass areas, such as buffers for landscape beds and to hold mulch into place, along with use of turf as a filtration buffer for runoff from organically mulched areas, will be allowed. Grassed swales will be allowed.

3.4 Design and Layout for Homeowners

3.4.1 Florida-Friendly. The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Homeowner will design the landscape so that plants serve a number of functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the property.⁴⁴

⁴³ For more information, please see, "Community ButterflyScaping: Community ButterflyScaping: Move beyond butterfly gardening to create a large-scale butterfly habitat." available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

⁴⁴ Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010);

3.4.2 **Existing Native Vegetation.** Homeowners will retain and incorporate existing native vegetation into the landscape whenever feasible.

3.4.3 **Landscaping Selection.** In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Plant Selection Guide, the Developer, Association or Homeowner, as applicable, will select landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Homeowner should have at least five species of plants in the yard, consistent with the new homeowner Florida-Friendly Landscaping™ recognition checklist.⁴⁵ The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not invasive exotics. By the same token, many plants that are listed may be unsuitable in some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

3.4.4 **Community ButterflyScaping.** Homeowners will preserve and enhance existing butterfly host vegetation on their properties.⁴⁶

3.4.5 **Turfgrass.** Homeowners will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (a) selection of grasses that are appropriate for the location and that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (b) use of IPM in selection of pesticides.⁴⁷ Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

3.4.6 **Appurtenances.** Homeowners are encouraged to use rain barrels, cisterns, rain gardens, and compost bins, as needed, within the Florida-Friendly Landscaping™ design concept. The Association may not prohibit these items, but the Association may regulate the aesthetics of these items, including but not limited to placement.⁴⁸

3.5 **Plant Installation.**

For more information, Please see Hansen et al, 2009. "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape". Available at <http://edis.ifas.ufl.edu/ep396>

⁴⁵ Checklist available at http://fyn.ifas.ufl.edu/materials/FYN_Yard_Recognition_Checklist_2010.pdf

⁴⁶ For more information, please see, "Community ButterflyScaping: Community ButterflyScaping: Move beyond butterfly gardening to create a large-scale butterfly habitat." available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

⁴⁷ This allows the right plant-right place concept to come in to place, so that the least drought tolerant grasses are not selected for areas where irrigation needs would be much greater than for other grasses, or that shaded areas do not receive full sun only grasses.

⁴⁸ See Fla. Stat. § 720.3085 (2010)

3.5.1 **Association Installation.** All plant installations will be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

3.5.2 **Homeowner Installation.** All Homeowner plant installations will be conducted in accordance with the most current version of the Florida Yards and Neighborhoods Manual.

3.6 **Mulching.**⁴⁹

3.6.1 **Florida Green Industries Best Management Practices.** All mulching will be conducted in accordance with the most current version of the [Florida Green Industries BMPs handbook guidelines](#).

3.6.2 **Placement.** Mulch will be placed in a thickness of 3–4 inches and not piled around the trunks of trees or the stems of landscape plants. Several inches of clearance around tree trunks and plant stems are required. Mulch settles after initial application and will be maintained at a depth of 2–3 inches. Large mulched areas that slope to impervious surfaces or water bodies will be bordered by a turf or other groundcover to slow and absorb nutrient-laden runoff from the mulched area.

3.6.3 **Organic Mulch.** Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2–3 inches. Mulch will be applied to extend to at least a tree's drip line, or beyond, or to at least an 8-foot diameter around the tree. Organic mulch and recycled mulch (including leaves, pine needles, grass, and shrub clippings) are recommended.

3.6.4 **Cypress Mulch.** Cypress mulch is often made from waste wood generated in manufacture of these products, but it may also be produced from whole trees cut from wetlands. The use of cypress mulch is not recommended, as its origins may be difficult to determine.

3.6.5 **Inorganic Mulch.** Shell, crushed stone, or pebbles can be used as mulch but will not contribute to the soil's nutrient and organic content or water-holding capacity. Limestone and shell both raise soil pH and reflect heat, increasing the water needs of plants. If these products are used, they must be installed over top of a woven or other pervious ground cloth to keep them from sinking in sandy soils. These mulches last a long time, but will need to be cleared of debris to look their best.

3.6.6 **Surface Below Mulch.** Impervious surfaces, including plastic sheeting, will not be placed below mulch.⁵⁰ This does not prohibit the use of woven or other pervious ground cloth.

⁴⁹ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

⁵⁰ Placing plastic sheeting or any other impervious substance below mulch prevents water from being absorbed into the ground and can increase flooding.

3.6.7 Other Prohibited Ground Coverings. White gravel, shells, and other similar light colored materials are prohibited as major landscape ground coverings in lieu of vegetation.⁵¹ However, such materials may be used as porous surfaces for walkways, patios or drives, for erosion control, mulches, or as landscaping accents. The Association may regulate the aesthetics of such materials. Use of artificial turf is not consistent with Florida-Friendly Landscaping™ and is not recommended.

3.7 Maintenance Activities for Common Area or Managed Area

3.7.1 Fertilizer Use.⁵²

(a) **Definition.** Fertilizers are defined as any substance that contains one or more recognized plant nutrients and promotes plant growth; controls soil acidity or alkalinity; provides other soil enrichment; or provides other corrective measures to the soil.

This definition does not include unmanipulated animal or vegetable manures, peat, or compost that makes no claims as described in the above definition.⁵³

(b) **Scheduling and Quantities.** Fertilization scheduling and quantities will not exceed the “low maintenance” recommendations of the University of Florida Cooperative IFAS Extension Service. The Landscaping Committee may grant a written exception for a period not to exceed 90 days for specific applications to diseased or damaged plants, confirmed nutrient deficiencies, or other justifiable reasons.

(c) **Reclaimed Water.** If reclaimed water is used for irrigation in the Community, the Landscaping Committee will obtain reclaimed water nutrient content reports from the utility provider at least quarterly, and will disseminate those reports to all Homeowners and landscape contractors working in the Community. Landscapers and Homeowners will reduce nitrogen fertilizer applications appropriately. Unless tissue testing confirms a phosphorus deficiency, applications of fertilizer to turfgrass irrigated with reclaimed water will be limited to a grade of zero phosphate.

(d) **Application.** Fertilizers and pesticides may not be applied within a minimum of 10 feet from the edge of any water body, except as specifically permitted by the pesticide label and state law for aquatic pest control.⁵⁴ For the purposes of this section, water

⁵¹ These materials increase the need for herbicide use, have no habitat value, reflect rather than absorb heat, and do not produce oxygen like plants. UF/IFAS, FDEP, et al., Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes, 2009, available at <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.

⁵² This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

⁵³ Fla. Stat. § 576.011(12) (2010)

⁵⁴ Community Associations may wish to establish a buffer zone or low impact zone at a greater distance. Some local governments may have more restrictive ordinances. The removal of aquatic weeds from state waters requires an aquatic plant removal permit from FFWCC (additional information is available at <http://myfwc.com/nonnatives/InvasivePlants/index.htm>).

body includes, but is not limited to, creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District. All fertilizer spills or granules that may have been deposited on impervious surfaces will be collected or swept back into the vegetated area.

3.7.2 **Mowing.** Mowing in Common Areas and Managed Areas will be done in accordance with the most current version of the [Florida Green Industries BMPs handbook](#) and by certified landscaping contractors.⁵⁵ Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area.

3.7.3 **Disposal of Landscape Material.** Turf Clippings. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies.

3.8 **Homeowner Maintenance.** Each Homeowner will conduct routine maintenance including fertilizer use, if needed, and mowing in accordance with the most current version of the [Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping](#)TM. Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies. Homeowners are encouraged to compost their vegetation for use on landscaped areas.

3.9 **Landscape Maintenance Contracts.**

3.9.1 All lawn maintenance contracts will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection [Green Industries Best Management Practices manual](#), and if needed, irrigation, fertilizer and pesticide applications must be at the low end of the maintenance recommendations contained in the most recent copy of the manual.

⁵⁵ Homeowner Associations may use all or part of the model Covenants, Conditions and Restrictions but at a minimum to be a Florida-Friendly, they must use maintenance contractors who are certified in the Green Industries Best Management Practices program, have maintenance contracts that reflect Green Industries Best Management Practices, and provide continuous education to their residents about Florida-Friendly LandscapingTM design and maintenance practices at regular intervals. Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agricultural applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

3.9.2 All contractors must employ Green Industries Best Management Practices-certified supervisors and applicators of fertilizer or pesticides. At least one certified person must be on site when work is being performed.⁵⁶

3.9.3 **Reduced Fees.**⁵⁷ Installation of Florida-Friendly Landscaping™ should reduce the need for water, fertilizer and other maintenance on a yard and has been shown to reduce maintenance needs and costs in many communities across Florida. Homeowners who have installed a Landscaping Committee-approved Florida-Friendly Landscape in their yard, utilizing techniques that reduce the maintenance needs of the yard and pest control services, may qualify for a reduced or eliminated maintenance fee. Upon final installation, the Landscaping Committee may inspect the yard to ensure that the landscape meets some minimal requirements and approve the reduced or eliminated fee. A secondary contract outlining this agreement between the Homeowner and Association will be initiated.

4. Irrigation

4.1 **Necessity of an Irrigation System.** Irrigation systems are not required.

4.2 **Design.**

4.2.1 **Lawns not requiring Irrigation Systems.** Where a Homeowner has designed and installed a lawn in accordance with Florida-Friendly Landscaping™ practices, if the Homeowner's property is irrigated only through a properly maintained and operated micro-irrigation system or by hand watering by hose, rain barrels or cisterns, the Homeowner may in certain circumstances be exempt from additional irrigation system requirements throughout the Homeowner's Association documents. Upon final installation, the Landscaping Committee may inspect the yard to ensure that the landscape meets relevant local government ordinances and some minimal requirements and determine which irrigation system requirements from which the Homeowner will be exempt.

4.2.2 **Irrigation Design.** Where necessary, all irrigation systems will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida. The irrigation system will be designed so as to not overlap with water coverage zones, not to water impervious areas, and not to irrigate within 3 feet of the building foundation. The irrigation design will separate turf irrigation areas from landscape bed irrigation areas. All new irrigation systems shall meet the more stringent of the current requirements of Standards for Landscape Irrigation in Florida⁵⁸ and all current Water Management District (WMD) and local

⁵⁶ Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agricultural applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

⁵⁷ This provision will not properly operate unless there is a separate landscaping component of the assessment. Please carefully examine the applicable assessment structure for enabling language.

⁵⁸ See Fla. Stat. § 373.228 (2010) Available: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm; Please also see Florida Irrigation Society Standards and Specifications, publication available for purchase at <http://fisstate.org/publications.html>

government requirements, in addition to current Best Management Practices as established by the most current version of the [Florida Green Industries BMPs handbook](#), including the uniform distribution of water throughout all zones.⁵⁹ Before and during construction, the designer of the Irrigation System will approve in writing any changes to the irrigation design. A copy of the state Standards for Landscape Irrigation in Florida is available from Florida Department of Environmental Protection (FDEP) or the local Water Management District.⁶⁰

4.3 Irrigation Plan & Operation Manual.⁶¹

4.3.1 The Landscaping Committee will develop an irrigation plan for the Community Managed Areas or Common Areas that includes, but is not limited to, an irrigation system layout identifying the location of the irrigation system components, irrigation times and maximum irrigation application rate per lawn, area, or zone.⁶²

4.3.2 The irrigation plan will meet or exceed state and local water regulations.

4.3.3 Subject to the limitations under Section 2.3.2(e), the Homeowners may request and the Landscaping Committee will provide a copy of materials including, but not limited to, the irrigation plan and the operation manual for all irrigation systems.

4.4 Installation

4.4.1 All irrigation systems in the Community will be installed according to the state Standards for Landscape Irrigation in Florida and will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida.

4.4.2 **Rain Shut-off Devices or Soil Moisture Sensor Installation.** Any person who purchases and installs an automatic landscape irrigation system is required by Florida law⁶³ to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.⁶⁴ Rain shut-off devices, evapotranspiration-based (ET) controllers, or soil moisture sensors will be installed and operational for all in-ground irrigation systems. Rain shut-off devices will be placed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.

⁵⁹ This sentence should refer to the most current version of the Standards and Florida Green Industries BMPs manual and not to a specific set of guidelines since new revisions of the Standards and the BMPs manual will eventually come out.

⁶⁰ The standards for landscape irrigation can be found at the FDEP website at: www.dep.state.fl.us/water/waterpolicy/land_irr.htm

⁶¹ Where possible, Florida-Friendly Landscaping™ may not dictate a need for irrigation systems for individual Homeowners. In these instances, HOAs may want to eliminate this provision.

⁶² Other requirements may be added depending on how broad the developer or association wishes the irrigation plan to be but the drafter should always be cautious and aware of local irrigation laws or rules. The plan should include exceptions for newly installed landscaping, which usually requires more frequent irrigation timing.

⁶³ Fla. Stat. §373.62 (2010)

⁶⁴ Pursuant to Fla. Stat. §373.62(1) (2010); Any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

4.4.3 **Plant Irrigation Upon Installation.** The irrigation will match the new space, and landscape beds and turf zones will be separate. Landscape beds are established with temporary micro-irrigation or are irrigated by limited-handwatering or micro-irrigation only.

4.5 **Scheduling.**

4.5.1 The Landscaping Committee will create and publish an irrigation schedule. If the Landscaping Committee does not employ innovative technology including, but not limited to, soil moisture sensors or ET Controllers, the Landscaping Committee will, for all Managed Areas and Common Areas managed by the Association, create an irrigation schedule consistent with the UF/IFAS Extension irrigation scheduling recommendations to the extent that they meet or exceed state and local law.

4.5.2 In developing an irrigation schedule, the Landscaping Committee will take into account seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture.

4.5.3 The Landscaping Committee will, in accordance with the Irrigation Schedule, manage the irrigation systems used in the Common Areas and Managed Areas. The Landscaping Committee will account for and exempt newly installed landscaping in the irrigation schedule.

4.5.4 If reclaimed water is used for irrigation in the Community, the Landscaping Committee must comply with the requirements of Section 3.7.1(c) and incorporate the results of the water nutrient content reports into irrigation schedules as necessary to achieve appropriate reductions in nitrogen fertilizer application.

4.6 **Preventative Maintenance Program.** For Common Areas and Managed Areas, the Landscaping Committee will implement a preventative maintenance program that includes but is not limited to the following:

- 4.6.1 replacing worn or broken components,
- 4.6.2 identifying and repairing leaks,
- 4.6.3 identifying and repairing broken or faulty sprinkler heads,
- 4.6.4 identifying and repairing system malfunctions,
- 4.6.5 periodically calibrating irrigation system to determine proper watering time,
- 4.6.6 periodically monitor water bodies to detect sudden increase in algae growth, and

4.6.7 performing weekly visual inspections to identify excessive runoff, including standing water.

4.7 Irrigation System Maintenance.

4.7.1 Irrigation systems will be continuously maintained in working order so that the application rate of water, including reclaimed water, to landscape and grass does not exceed the ability of the soil to absorb and retain water applied during one application.

4.7.2 Homeowners will comply with the requirements of this Article and will maintain the irrigation systems within their Property boundaries.

4.7.3 The Association will within the Common Areas and Managed Areas, make monthly inspection of all automatic irrigation systems for operating defects, periodically calibrate all automatic irrigation systems, and seasonally reset the irrigation controllers or timers to account for changes in plant growth and local weather conditions.

4.7.4 The irrigation system will meet or exceed the rules of the State, the controlling Water Management District and the local government.

4.7.5 If a Homeowner's irrigation system does not function properly, the Landscaping Committee may correct this problem.

4.7.6 Rain Shut-off Devices or Soil Moisture Sensor Maintenance.

(a) The Association will maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas.

(b) The Homeowners will maintain the shut-off devices or soil moisture sensors within their property boundaries if such devices are not managed by the Association.

(c) A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.⁶⁵

⁶⁵ Pursuant to Fla. Stat. §373.62(2)(2010); A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.

5. Surface Water Management; Stormwater; and Low Impact Design⁶⁶

5.1 Stormwater/Low Impact Development Design.

5.1.1 **Runoff.** All buildings, structures and infrastructure in the Community will be designed and constructed to avoid roof or structure runoff, or diversion, onto directly connected impervious areas (DCIA).⁶⁷ Once constructed, no alterations are permitted that will alter roof or structure drainage in any manner that channels runoff onto impervious surfaces.⁶⁸ Construction and alterations of existing building, structures and infrastructure will comply with the local government, FDEP, and Water Management District requirements for stormwater management including proper erosion and sediment control.

5.1.2 Surface Water Management System Easements

(a) **Basic Drainage Easement.** A non-exclusive perpetual easement will be created, declared, granted and reserved for the benefit of the Developer, the Association, the County, the Water Management District (WMD), and all Homeowners⁶⁹ for the purpose of storm water collection, retention, detention, treatment and drainage over, upon and within all drainage easements and drainage easement areas, if any, shown on the Plats or otherwise created, declared, granted or reserved by Developer pursuant to this Document, together with an easement and license to enter upon such Drainage Easements and Drainage Easement areas for the purposes of constructing, installing inspecting, operating, maintaining, repairing and replacing any and all storm water drainage, SWMS and LID elements, improvements and facilities from time to time located therein or thereon in accordance with and as required by the permit(s) for the SWMS issued by the WMD. Notice of the Drainage Easement will appear in the deed of each Lot in the Community according to the SWMS plan approved by the WMD. Developer also reserves, for the benefit of itself, the Association, the County, the WMD, and all Homeowners drainage easements over any and all other portions of the Community which may be reasonably required in order to provide storm water drainage for the Community, provided that such additional easements will not unreasonably interfere with a Homeowner's use and enjoyment of Homeowner's Lot. The Drainage Easements include the construction of all storm water drainage improvements and facilities shown on the plans of the SWMS for the Community as approved by the County and the _____ Water Management District pursuant to the WMD's Permit # _____ as modified and amended from time to time, and any replacement or supplemental permits, including, without limitation, construction permits, issued by the WMD, and such additional or supplemental facilities as may reasonably be required to provide adequate storm water drainage and surface water management to all portions of the Community. Easements also include reasonable access from the nearest public road or Common Area of the Community.

⁶⁶ Several of the following CCRs were modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

⁶⁷ Directly Connected Impervious Areas (DCIAs) are impervious surfaces that discharge to a stormwater system or water body. It should be noted that small, incidental areas such as patios, etc. that direct water to adjacent vegetated landscapes for infiltration are permissible, as they are not directly connected areas.

⁶⁸ Allowing stormwater to drain onto the adjacent landscape reduces the amount of irrigation that is needed to sustain that landscape.

⁶⁹ The parties listed here may change depending on which entities have SWMS permit requirements. The purpose of these CCRs is to fulfill all of the permit requirements.

(b) **Emergency Drainage Easement.** A non-exclusive perpetual easement over and upon all Drainage Easements and Drainage Easement areas comprising and appurtenant to the SWMS will be created to and for the benefit of the County and the WMD, for the purpose of undertaking emergency maintenance and repairs to the SWMS in the event that inadequate maintenance and repairs to the SWMS in the event that inadequate maintenance or repair of the SWMS by the Association creates a hazard to public health, safety or general welfare. If the County and/or WMD will undertake any emergency maintenance and repairs to the SWMS because of the inadequate maintenance and repair of the SWMS by the Association, the County and/or the WMD will have a lien upon the Common Property comprising the SWMS as security for the payment by the Association of the reasonable costs and expenses incurred by the County and/or WMD. The creation of this easement does not impose any obligation, burden, responsibility, or liability to enter the Community and take any action to maintain or repair the SWMS.

5.1.3 Stormwater/Low Impact Development: Operation and Maintenance of the Surface Water Management System

(a) **Delegation of Operation and Maintenance.** Unless otherwise determined by the WMD or a local ordinance, the Association will operate and maintain the SWMS, including any LID elements.

(b) **Failure of Contractor to Comply with Professional Standards.** If it is discovered that a contractor hired by the Association to service the SWMS has not properly complied with established professional standards in operation and maintenance or reporting, the Association will immediately terminate all of the Association's contracts with the offending contractor and issue no future contracts to the contractor for at least 5 years.⁷⁰

5.1.4 Homeowner's Interaction with Surface Water Management System Elements.

(a) **Notification of Low Impact Development Elements on Homeowner's Lot.** At such time as the Association receives notice that a Lot has been conveyed to a new Homeowner, the Association will notify that new Homeowners of the LID Elements located on such Lot. Upon request from Homeowner, the Association will go to Homeowner's Lot as soon as reasonably possible and show Homeowner the location of all LID Elements on Homeowner's Lot.⁷¹

(b) **Homeowner's Interference with Surface Water Management System Elements.** Homeowner will not interfere with any SWMS Elements on Homeowner's Lot so as to preclude the function of the element. This includes LID elements, which are incorporated into the SWMS. Florida-Friendly LandscapingTM plantings, including Community

⁷⁰ Since no certification in operating and maintaining a SWMS currently exists, this section attempts to create some sort of accountability for contractors. In the event that a training course became available, this restriction would be changed to require that all contractors who work on the SWMS are certified and properly apply the training they received.

⁷¹ Alerting Homeowners to SWMS Elements on their Lots will hopefully prevent Homeowners from interfering with the elements.

ButterflyScaping practices and preservation and planting of related vegetation, along with minimal mowing, are allowed as long as they do not preclude the function of the element.⁷² Check with WMD offices prior to any alteration of the SWMS, per Section 2.1.5(e) below.

(c) **Altering Flow of Surface Water Drainage.** Homeowner will not alter, change or obstruct the flow of any surface water drainage in a SWMS Element on Homeowner's Lot.

(d) **Homeowner's Use of Area of Lot Subject to Surface Water Management System Easement.** Homeowner may use any portion of Homeowner's Lot subject to a SWMS Easement so long as Homeowner's use is not inconsistent with the SWMS Easement.

5.1.5 **Alteration of the Surface Water Management System.** No alterations of the SWMS and its facilities and appurtenances will be permitted without the prior written consent and approval of the WMD.

5.1.6 **Standing to Enforce the Provisions in this Section.** The Water Management District, County, Association, and all Homeowners are beneficiaries of Section 2.1.5; therefore the Water Management District, County, Association, and all Homeowners will have standing to enforce any of the provisions in this section.

5.1.7 **Engineering Map of Surface Water Management System Elements.** A comprehensive, detailed, engineering map of all SWMS elements, including LID elements, and the maximum allowable impervious surface for each Lot has been attached to this Document as Exhibit _____.⁷³

5.1.8 **Construction and Renovations.**

(a) **Erosion and Sedimentation Control.** During the construction or renovation of a dwelling, the Homeowner or the Homeowner's builder will control erosion and sedimentation during and after construction, stabilize cleared areas, limit stockpiles, protect stormwater inlets during construction, remove temporary control systems after construction, de-compact soils where construction activity has compacted pervious areas, and limit the placement of gutters and drains. The Homeowner's builder will comply with the local government, FDEP, and Water Management District requirements for erosion and sediment control, where applicable.

(b) **Impervious Cover.** The amount of impervious cover allowed on the lot is outlined by the local government and WMD permits and will not be increased by the Homeowner unless consistent with local government permits, WMD permits, and other of this Declaration.

⁷² This prevents Homeowners from filling in swales or wetlands on their Lot.

⁷³ Attaching the engineering map to the Declaration will provide notice of the SWMS elements to all Homeowners.

5.1.9 **Stormwater Management Areas.** Any stormwater systems managed by the Association will follow all regulations or recommendations stipulated by local government, the local Water Management District, and any other applicable agency.⁷⁴

5.1.10 **General Stormwater Pollution Prevention.**

(a) **Stormwater Structures.** The Association will allow the following structures and activities including, but not limited to, cisterns, rain barrels, rain gardens, washing cars on lawns and other pervious surfaces, and the use of LID designs including, but not limited to, curb cuts and swales. The Landscaping Committee may regulate the aesthetics and siting of such activities provided safety is maintained and functionality is not significantly inhibited.

(b) **Low Impact Development.** Where possible, the Association and the Homeowner will use low-impact development (LID) designs and practices that reduce stormwater runoff. The Association and the Homeowners will not sweep, nor allow contractors or laborers to sweep, organic debris, such as leaves or grass, into storm drains or curbs. LID designs and practices that reduce stormwater runoff includes, but is not limited to, designs and practices creating curb cuts that direct the flow of runoff to depressional areas and designs and practices adding depressional areas such as rain gardens and swales, including pervious surfaces.

5.1.11 **Washing of Vehicle.** Homeowner may wash a vehicle on a pervious surface on Homeowner's Lot provided that Homeowner does not use any harmful chemicals or antibacterial substances.

5.1.12 **Aquatic Plants.** Source control is the best way to limit nutrients going into water bodies, but native aquatic plants should be maintained at the ponds edge, in the littoral zone, a portion of the littoral zone, or on floating mats to provide additional protection against excessive nutrients.

5.2 **Maintenance of Areas Managed by the Association**⁷⁵. Maintenance Practices within the Community will be consistent with the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices manual, and if needed, irrigation, fertilizer and pesticide applications must be at the low end of the maintenance recommendations contained in the most recent copy of the manual.

⁷⁴ In general, Water Management Districts do not allow homeowner associations to manage or maintain stormwater ponds unless the association applies for, and meets certain permit criteria. Water Management Districts prefer that local government stormwater utilities manage and maintain stormwater systems if the local government body is willing to take on the monitoring and maintenance of the stormwater pond: See F.A.C. Ch 40C-42.027(1)(2)(4). If an Association does take on the monitoring and maintenance of a stormwater system, then the Water Management District dictates guidelines for permit qualification and maintenance: See F.A.C Ch40C-42.027 and .029. Moreover, many Water management Districts set forth recommended language for covenants and restrictions concerning stormwater maintenance. See Appendix "A" "Recommended Language For Declaration of Covenants and Restrictions" available at <http://www.sjrwmd.com/programs/regulation/rules/pdfs/oprmaint.pdf>.

⁷⁵ In a situation where there is a Community Development District in addition to, or rather than, a Homeowner's Association, the definition of Association may be amended to include the Community Development District.

6. Pest Control

6.1 Pesticide Application.

6.1.1 Preventive⁷⁶ blanket applications of pesticides are prohibited, except those performed as part of an IPM program in accordance with the most current version of the Florida Green Industries BMPs handbook or for termite prevention.

6.1.2 All pesticide applications in Common Areas will be done by a Certified Professional and in accordance with the most current version of the Florida Green Industries BMPs handbook.

6.1.3 Homeowners will use Integrated Pest Management for controlling pest problems and follow the most current version of the [Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping](#)TM.

6.1.4 All pest control companies servicing a Homeowner's property must have valid state and county licenses, follow Integrated Pest Management as prescribed in the Florida Green Industries BMPs handbook, and have a valid certification.

6.2 Certification Requirements.

6.2.1 Only those employees of landscaping, fertilizing, or pesticide application companies who have a current certificate in Florida-Friendly Best Management Practices for Protection of Water Resources by the Green Industries from the UF/IFAS Extension Service (or an equivalent program approved per 403.9338 F.S.) and who demonstrate that the company's principles follow these Best Management Practices will be allowed to service Homeowners' properties, Common Areas and Managed Areas in the Community.

6.2.2 The Landscaping Committee will maintain an updated list of Certified Professionals who may perform landscaping, pesticide or fertilizing services within the Community and will update this list every 6 months. Homeowners not using the for-hire contractors included in the Landscaping Committee's Certified Professionals list will obtain written permission from the Landscaping Committee before any services are performed in a Homeowners property.

6.2.3 Laborers who do not apply fertilizer or other chemicals may work only under the direct physical supervision of a certified employee. All fertilizer or agrichemical applicators will display appropriate documentation of licensure or certification required by the Florida Department of Agriculture and Consumer Services before work is performed.

6.3 **Pesticide Records for Common Areas.** The Association will obtain from the certified pesticide application company accurate pesticide application records including records for any restricted use pesticides used in the Common Areas and Managed Areas as may be

⁷⁶ Preventative applications are those which are done regardless of whether there are pest problems or not. Blanket applications may be used when necessary to cure an existing pest problem.

required by Florida law.⁷⁷ The Association will maintain these pesticide records for 2 years from the application date or as may be required for pesticide applicators by Florida law.⁷⁸

7. Pets & Wildlife

7.1 **Scope.** This section applies to pets and to human treatment of all wild animals anywhere within the Community on both private and common property.

7.2 Pets.⁷⁹

7.2.1 **Local Ordinances.** All local pet ordinances apply to the Community.

7.2.2 **Excrement.** Pet wastes contain not only lots of nutrients, but also many harmful bacteria.⁸⁰ Both the nutrients and bacteria may have a negative impact on the local landscaping as well as regional water quality. Pet owners will pick up after their pets in the Community and appropriately dispose of such wastes in a trash receptacle.

7.2.3 **Harassment of Wildlife.** All pets will be confined on a leash, held by and under the physical control of a responsible person at all times when they are outside a Property in the Community. Pets may not harass wildlife attracted to the Community.

7.2.4 **Cats.** Cats should be kept indoor(s) when not on a harness or leash, unless Homeowner attaches a bell or some other noisemaking device to the cat's collar. Attaching a noisemaking device to a cat's collar can prevent the cat from sneaking up and killing birds, squirrels, lizards, and other animals.

7.2.5 **Aquariums.** Homeowner will not allow any organic matter from Homeowner's aquarium to enter any waterbody or Element of the SWMS. This prohibition includes both plant and animal matter.⁸¹

7.3 **Hunting and Trapping.** Hunting or trapping of any animal is prohibited.

7.4 **Attracting and Taming Wildlife.**

7.4.1 Homeowners may not tame, acquire, keep, or confine any form of wildlife. Young or injured wild animals found or acquired cannot be kept or reared, and must be surrendered to a professional rehabilitative care center.

⁷⁷ Florida pesticide law requires certified applicators to keep records for 2 years of all restricted use pesticides applied. *See* Fla. Stat. §487.160 (2010).

⁷⁸ The Florida Yards & Neighborhoods program recommends that pesticide records should be kept longer than 2 years for the successful implementation of an Integrated Pest Management program.

⁷⁹ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

⁸⁰ For more information, please see Green Industries, Best Management Practices manual, p. 48

⁸¹ Many exotic invasive plants and animals are introduced into Florida's environment by dumping aquatic plants and animals into waterbodies. For examples of species which were introduced in this way see: Mark A. Mossler and Ken A. Langeland, *Florida Crop/Pest Management Profile: Aquatic Weeds*, 2006, available at <http://edis.ifas.ufl.edu/PI175>, and Florida Fish and Wildlife Commission, *Florida's Exotic Freshwater Fishes*, 1999-2008, available at <http://myfwc.com/fishing/fishes/non-native.html>.

7.4.2 Homeowners are encouraged to attract wildlife to their Lot by providing habitat that offers cover, water, and food for wildlife. Subject to limitations by the Association, Homeowners may provide the following habitats including native vegetation, bird feeders, nesting boxes, sheltering boxes, garden ponds, and bird baths. Artificial shelters and nesting boxes will be maintained in good repair and not placed or distributed so as to create conflicts by harboring non-native species or attracting wildlife in such numbers as to be in conflict with humans. Nest boxes will be constructed so that they can be cleaned and disinfected at least annually.

7.4.3 Garden ponds and birdbaths will be maintained in good order to prevent the proliferation of noxious insects (such as mosquitoes), toxigenic blue-green algae, bacterial pathogens, or wildlife that could present a problem for people if present in such numbers or places where conflict would occur. Garden ponds and birdbaths will also be designed child safe in order to prevent accidental drowning by children. For more information on these topics, Homeowners are encouraged to visit the University of Florida's Wildlife Extension Web site at <http://www.wec.ufl.edu/extension>.

7.5 **Killing or Harming Wildlife.**

7.5.1 Wild animals will not be purposefully injured. Under some conditions, aversive conditioning (training animals to avoid a conflict situation through the use of unpleasant stimuli) may be used as part of a nuisance control program but never in such a way as to cause or sustain suffering of the animal.

7.5.2 Wild animals may be humanely killed to relieve their suffering due to critical injury or illness. The recommended means by which this should be accomplished is euthanasia administered according to veterinary medical standards as established by the American Veterinary Medical Association (AVMA) in their most current guidelines, or other guidelines that have been sanctioned by The Humane Society of the United States (HSUS). Situations of extreme emergency in which human safety or the immediate relief of animal suffering is at issue could warrant exceptions to this requirement.

7.5.3 Control of commensal rodents (rats and mice) where federal, state, or local regulation and standards rule; where human health and safety concerns are threatened; and to limit the growth and spread of a population due to human causes could also warrant exceptions to this requirement. Lethal control of commensal rodents may be conducted by Homeowners or registered pesticide applicators, but must be done in strict accordance to Association guidelines and state laws. The use of glueboard traps under any circumstances is expressly prohibited.

7.6 **Feeding Wildlife.**⁸²

7.6.1 Except as provided by Section 2.1.6(d) above, feeding wildlife is prohibited. Wildlife may not be indirectly fed by leaving food out for companion animals. Feeding must not lead to conflicts between animals and humans.

⁸² Homeowners recognize that wildlife may be placed at risk by feeding that habituates animals to humans resulting in diminution of an animals' fear or normal caution around humans; by abnormally concentrating animals; by increasing risk of contact between wild animals, humans or pets, and other similar situations.

7.6.2 The Association may recommend proper foods and feeding schedules. The Association may also suspend all bird feeding during any period of increased nuisance wildlife activity. Bird feeders should be limited in type and number. Feeders and human-supplied water sources, including birdbaths, will be kept clean so that disease is not transmitted. Feeders should be protected from raiding by mammals such as raccoons.

7.7 **Wildlife Conflicts.**

7.7.1 Resolutions to conflict between humans and wild animals will first be attempted using non-lethal means, except under extreme and immediate circumstances where human safety or the safety of a companion animal is imminently threatened.

7.7.2 Wildlife control, including nonlethal actions, will not be conducted simply because a Homeowner considers the mere presence of a wild animal to be a “pest” or “nuisance.”

7.7.3 The approach to wildlife conflict resolution will follow a series of steps, including:

- (a) The conflict is identified,
- (b) The species causing it is determined and, if possible, the individual animal is identified,
- (c) Methods to resolve the conflict ranging from least to most invasive and injurious are identified, and
- (d) An action plan that ensures the least injurious and invasive approach suitable is evaluated and undertaken before other measures are considered.

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

7.8 **Wildlife Management Plan for Controlling Wildlife Populations.**

7.8.1 Circumstances may arise where the Community has evaluated a conflict situation and agreed to the need to intervene in and control a local population of wild animals (not merely an individual wild animal or small number of wild animals).

7.8.2 Substantial and significant need must be demonstrated for human intervention to be considered, and regulations and guidelines established by the Florida Fish and Wildlife Conservation Commission will be consulted.

7.8.3 Alternatives to control including altering human practices (such as waste handling and landscaping) and methods to exclude or repel animals should be undertaken before control measures are considered.

7.8.4 Control measures must be undertaken through a wildlife management plan that carefully evaluates the best methods for controlling the specific species of concern and seeks the most humane long-term solution. Plans that require multiple control measures should also include long-term strategies to prevent the recurrence of the need for control measures.

7.8.5 Control measures may include humane animal capture and relocation to other natural habitats on the property or as allowed by state permitting authorities, reproductive intervention (such as immunocontraception for mammals or egg addling for birds), and other measures reviewed and agreed to be humane by the Association.

7.9 **Nests and Dens.**

7.9.1 Nests of native or migratory birds will not be taken, moved or interfered with in any manner as stipulated under applicable state and federal law. No wild animal den or nest of unprotected bird species may be disturbed, moved, or altered except as part of a planned conflict abatement program (described under Wildlife Conflict or Controlling Wildlife Populations), or under compelling circumstances of human health, safety, or security needs.

7.9.2 Young will not be taken or moved from dens or nests but allowed to mature until they naturally disperse, except where the conditions listed above merit more urgent response. In these circumstances, the family integrity should be maintained by methods to prevent orphaning.

7.10 **Wildlife Corridor Maintenance**⁸³

7.10.1 **Wildlife Corridor Designation Map.** The Association will maintain a map showing all of the wildlife corridors in the Community at the Association office. Any Homeowner may request to inspect the map.⁸⁴

7.10.2 **Conservation Easement.** A conservation easement was recorded, pursuant to Florida Statute § 704.06, to protect the wildlife corridors in the Community in Official Records Book _____, Page _____ of the Public Records of _____ County. (Note: Any such easement should be recorded prior to the covenants – attached as Exhibit ___ is a form easement that may be used for this purpose).

7.10.3 **Encroachment.** Neither the Association nor a Homeowner will mow, prune or in any way encroach within 30 feet of a designated wildlife corridor. This restriction applies regardless of whether the area within 30 feet of the corridor is located on a Homeowner's Lot.

⁸³ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

⁸⁴ A wildlife corridor is a strip of habitat connecting wildlife populations separated by human activities such as roads or housing. Wildlife corridors help combat the effects of inbreeding by allowing an exchange of individuals between populations. Wildlife corridors are susceptible to edge effects, a much lower habitat quality along the edge of the habitat when compared to the inner portions. Limiting human interference near the boundary of the wildlife corridors can help lessen the edge effect.

7.10.4 **Lighting.** Homeowner will not allow any light on Homeowner's Lot to shine directly into or within 30 feet of a designated wildlife corridor.

7.10.5 **Buffers.** Homeowner will not interfere with any vegetative or man-made buffer separating Homeowner's Lot from a wildlife corridor regardless of whether the buffer is located on Homeowner's Lot.

8. Wildfire Prevention⁸⁵

8.1 Design.

8.1.1 **Wildfire Prevention Committee.** The Landscaping Committee will either act as a Wildfire Prevention Committee or will appoint a separate committee to carry out the wildfire prevention duties set forth in this Section.

8.1.2 General Duties of the Wildfire Prevention Committee.

(a) **Application to Become a FireWise Community.**⁸⁶ Upon initial appointment by the Association, the Wildfire Prevention Committee will contact a FireWise representative and apply to become a FireWise Community. If recognized, the Wildfire Prevention Committee will renew their status annually. If not recognized, the Wildfire Prevention Committee will address the recognized problems and will submit a new application annually.

(b) **Wildfire Hazard Assessment of the Community.** The Wildfire Prevention Committee will employ a wildland/urban interface specialist, or a comparative professional, to complete a wildfire hazard assessment and use the assessment to create a Wildfire Hazard Plan that identifies locally agreed-upon solutions that the Community can implement.

(c) **List of Recommended Trees and Shrubs.** The Wildfire Prevention Committee will maintain a list of recommended plants resistant to wildfires. Homeowners are strongly encouraged to select plants from this list when installing new flora within 30 feet of a structure.⁸⁷

8.2 Installation.

8.2.1 **Landscaping by the Developer.** The Developer will ensure installation of landscaping that mitigates the chance of wildfires and will avoid the use of fire-prone flora.

8.2.2 Replacement Landscaping.

⁸⁵ This Article is not necessary for communities in areas of Florida that are not prone to wildfires. The Division of Forestry (FDOF) maps areas prone to wildfires, see http://www.fl-dof.com/wildfire/wf_fras.html.

⁸⁶ Administered by the FDOF, Firewise Communities/USA is program in which communities help prevent losses due to wildland/urban interface fire through community education and preventative practices. To become a FireWise Community, a community or neighborhood must submit an application, available at <http://www.firewise.org/usa/>.

⁸⁷ A plant list is available from IFAS at hort.ufl.edu/fyn/list.pdf or at <http://www.firewise.org/usa/>

(a) Any Homeowner replacing landscaping or installing new landscaping on private property will consider the wildfire implications.

(b) Any new or replacement landscaping done in Common Areas and Managed Areas should be in accordance with the Wildfire Hazard Plan maintained by the Wildfire Prevention Committee.

8.3 Maintenance

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

8.3.2 **Preventative Maintenance Landscaping by Homeowners.** In addition to other preventive measures, Homeowners are encouraged to:

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

9. Lighting⁸⁸

9.1.1 **Dark Sky Lighting.** All outdoor lighting will be of low intensity and conform to "Dark Sky" standards of downward projection.⁸⁹

9.1.2 **Motion Sensors/Timers.** All outdoor lighting will be connected to a motion sensor or timer that limits the amount of time the lighting is activated.

9.1.3 **Holiday Lighting.** The preceding sections are not intended to prohibit the use of festive lighting during the holidays, so long as the festive lighting is not excessive.

⁸⁸ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

⁸⁹ Use of "Dark Sky" lighting can help cut down light pollution. Light pollution disrupts ecosystems, causes adverse health effects in humans, and obscures vision of stars and other celestial bodies. More information on "Dark Sky" lighting can be found on the website for the International Dark Sky Association at <http://www.darksky.org/mc/page.do>.

10. Energy Efficiency; Renewable Energy.

10.1 A Homeowner is permitted to install a solar collector, clothesline, or other energy device using renewable resources on the Homeowners' private property in accordance with Florida Statutes Section 163.04.

10.2 The Association may regulate the aesthetics and construction of such systems.

11. Homeowner Education

11.1 **Educational Package.** The Association will create a Florida-Friendly educational package that includes, but is not limited to, a copy of the Association's CCRs as well as any other relevant water conservation and Florida-Friendly Landscaping™ information. The Association will provide a copy of this educational package to all subsequent Homeowners. The Association recommends that Homeowners consult with local, county, or state FYN extension offices when appropriate.

11.2 **Subsequent Homeowner.** The Association will ensure that all subsequent Homeowners receive a copy of the Irrigation Plan and Schedule and operating manuals, including any warranties, for the following:

11.2.1 irrigation systems,

11.2.2 rain shut-off devices,

11.2.3 ET or soil moisture sensors, and

11.2.4 any other mechanical or electronic device implemented in the Irrigation Plan.

11.3 When a Homeowner sells their home, the Homeowner will notify the Association of the transfer and the Association will provide the new Homeowner with a copy of the operating manuals and any applicable warranties as stated above in this Exhibit.

11.4 The Association will conduct an educational program on Florida-Friendly Landscaping™ to educate all Homeowners and Association members at least once a year.⁹⁰ This should include conveying information in regards to protecting water quality, water savings, and other financial savings related to conservation and Florida-Friendly Landscaping™.

11.5 Wildfire Prevention and FireWise Landscaping

11.5.1 **Public Workshops.** The Wildfire Prevention Committee will hold a public workshop at least once a year to educate Homeowners about wildfires and preventative maintenance.

⁹⁰ This is strongly suggested to ensure Homeowner compliance with these Florida-Friendly CCRs and may be also done through an informational community website or bulletin board.

11.5.2 Educational Information. The Association will provide wildfire prevention information to new Homeowners.

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VI. Model Provisions for Existing Communities

DECLARATION EXHIBIT FLORIDA-FRIENDLY DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS

1. Definitions

(Note: The drafter will need to check any existing definitions in the Declaration for consistency with definitions)

1.1 “**Association**” means the corporate entity responsible for operating and maintaining the Common Areas of the Community.

1.2 “**Certified Professional**” means a person who possesses a certificate of completion in the Florida Green Industries Best Management Practices.

1.3 “**Florida-Friendly LandscapingTM**” means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.⁹¹

1.4 “**Florida Green Industries Best Management Practices**” includes those practices defined in the most recent version of the Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries.

1.5 “**Homeowner**” includes an owner of a Lot or Parcel.

1.6 “**Low Impact Development**” or “**LID**” is development that utilizes stormwater control techniques to control rainfall runoff by utilizing decentralized controls (such as pervious pavement, green roofs, vegetated swales, and infiltration trenches) by allowing water to infiltrate, filter, store, evaporate, percolate and detain, as appropriate, in place using biophysical characteristics of a property.

⁹¹ Fla. Stat. §373.185(1)(b) (2010)

1.7 “**Managed Areas**” includes any areas managed but not owned by the Association.⁹²

1.8 “**Surface Water Management System**” or “**SWMS**” is defined as the system, which is in place to regulate and control the flow of surface water. The SWMS incorporates methods and facilities to reduce impervious surface, disconnect impervious surfaces, infiltrate, convey, collect, store, retain, detain, absorb, inhibit, treat, use and/or reuse storm water to prevent flooding, overdrainage, environmental degradation and water pollution. The SWMS includes land, easements, improvements, facilities, Low Impact Development elements, and appurtenances.

1.9 “**University of Florida Institute for Food and Agricultural Sciences**” or “**UF/IFAS**” is a federal-state-county partnership dedicated to developing knowledge in agriculture, human and natural resources, and the life sciences, and enhancing and sustaining the quality of human life by making that information accessible. UF/IFAS maintains a website at <http://www.ifas.ufl.edu> and at the website “Solutions for Your Life” at <http://solutionsforyourlife.ifas.ufl.edu/>.

2. Landscaping

2.1 **Florida-Friendly Landscaping™**. The Association may not prohibit any Homeowner from implementing Florida-Friendly Landscaping™ on the Homeowner’s private property in accordance with Florida Statutes Section 373.185 (2010).^{93 94}

2.2 Site Preparation: Soil Testing.

2.2.1 Common Area or Managed Area

(a) **Topsoil**. For all newly developed areas, the Developer or the Association, as applicable, will keep existing topsoil onsite, making sure that it is not buried under additional fill but spread on top of imported fill where possible throughout the development.

⁹² In some communities, the Homeowners Association manages privately owned areas. This definition lets the reader know that there is a distinction between common areas and areas not owned but managed by the HOA.

⁹³ Fla. Stat. §720.3075(4)(b) (2010)

⁹⁴ Homeowner’s Association may use all or part of the model Covenants, Conditions and Restrictions. To be considered “Florida-Friendly,” communities must use maintenance contractors whose employees are trained in the Green Industries Best Management Practices program, have maintenance contracts that reflect Green Industries Best Management Practices, and provide education to their property managers and residents about Florida-Friendly Landscaping™ design and maintenance practices at regular intervals—at least once per year. In addition, Existing communities must address the issues in sections 2 – 4 (Section VI) in their CCRs. Existing communities may have only their common and managed areas certified as Florida-Friendly if they are unable to amend their CCRs, provided they have contracts, bylaws or written policies in place to require the practices. Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agricultural applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

(b) **Soil Testing.** Before landscape installation starts on all areas on which the Developer, or Association, as applicable, intends to install landscaping, the Developer or Association, as applicable, will, after site preparation and final grading, obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.⁹⁵ The Developer will make this information available to the Association as part of the Association Official Records. If after turnover of control to the Association, the Association intends to install new landscaping in the Common Areas or Managed Areas, it may only do so if the soil testing information on file for that lot is less than ___ years old. If the soil tests on file for the lot where new landscape will be installed are more than ___ years old, the Association will obtain soil analysis information from a reputable soil testing lab or the University of Florida/IFAS Cooperative Extension facility.

2.2.2 **Lot Soil Testing.** Prior to initial installation of landscaping on a Lot, the Lot Owner, whether Homeowner, Developer, or other party, must obtain soil analysis information from a reputable soil testing lab or the UF/IFAS Cooperative Extension facility to assess soil conditions such as soil type and texture, and pH.⁹⁶

2.3 Design and Layout for Common Areas and Managed Areas

2.3.1 **Florida-Friendly.** The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Developer and Association, as applicable, will ensure that the design of the landscape so that plants will serve environmentally friendly functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the Community.⁹⁷

2.3.2 **Existing Native Vegetation.** The Association will preserve and enhance host and nectar vegetation that attracts pollinators and provides food, shelter and habitat for a variety of wildlife.⁹⁸ The Association will preserve and enhance existing butterfly host vegetation located in preserves, easements, roadsides, undeveloped lots, vegetative buffers, around stormwater ponds, retention areas, Common Areas, and Managed Areas.⁹⁹

⁹⁵ An analysis of soil infiltration rate is also recommended but implies extra costs. For soil testing recommendations and information see the Soil and Water Science Department, Florida Cooperative Extension Service, University of Florida/IFAS at <http://edis.ifas.ufl.edu/SS156>.

⁹⁶ *Id.*

⁹⁷ Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010); For more information, please see "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape", Hansen, et al. 2009. This document is ENH1135, one of a series of the Environmental Horticulture Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida. Original publication date, September 2009. Visit the EDIS Web site at <http://edis.ifas.ufl.edu>. Written by: Gail Hansen, assistant professor, Environmental Horticulture Department; Jennifer Ramos, courtesy extension agent I, E.A. Felter, extension agent II, and Celeste White, courtesy extension agent I, Orange County, Orlando, FL, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

⁹⁸ For more information, please see, "Community ButterflyScaping: Community ButterflyScaping: Move beyond butterfly gardening to create a large-scale butterfly habitat." available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

⁹⁹ *Id.*

2.3.3 Landscaping Selection. In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Guide to Plant Selection and Landscape Design, the Developer or Association, as applicable, will ensure that the selection of landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Community must have at least ten species of plants within its Common Areas or Managed Areas. The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Florida Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not invasive exotics. By the same token, many plants that are listed may be unsuitable in some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

2.3.4 Turfgrass

(a) Association will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (i) selection of grasses that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (ii) use of Integrated Pest Management (IPM) in selection of pesticides. Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

(b) Functional turfgrass areas, such as buffers for landscape beds and to hold mulch into place, along with use of turf as a filtration buffer for runoff from organically mulched areas, will be allowed. Grassed swales will be allowed.

2.4 Design and Layout for Homeowners

2.4.1 Florida-Friendly. The Florida-Friendly Landscaping™ concept of right plant, right place will be used. The Homeowner will design the landscape so that plants serve a number of functions including, but not limited to, cooling, privacy screening, shade, aesthetics, wildlife habitat, runoff pollution prevention, and directing traffic flow onto and within the property.¹⁰⁰

2.4.2 Existing Native Vegetation. Homeowners will retain and incorporate existing native vegetation into the landscape whenever feasible.

¹⁰⁰ Please see UF IFAS Florida-Friendly Landscaping™ Design and Plant Selection Guide (2010); For more information, Please see Hansen et al, 2009. "Adopting a Florida-Friendly Landscape: Steps for Converting a Typical Development Landscape to a Florida-Friendly Landscape". Available at <http://edis.ifas.ufl.edu/ep396>

2.4.3 Landscaping Selection. In accordance with the relevant local government landscaping ordinances and the most current version of the UF/IFAS Florida-Friendly Landscaping™ Plant Selection Guide, the Developer, Association, or Homeowner, as applicable, will select landscape plants suited to the soil and other site characteristics utilized by the Florida-Friendly Landscaping™ concept. The Homeowner should have at least five species of plants in the yard, consistent with the new homeowner Florida-Friendly Landscaping™ recognition checklist.¹⁰¹ The Association and the Homeowners will use plants listed in the most current version of the UF/IFAS Friendly Landscaping™ Guide to Plant Selection and Landscape Design or Landscaping Committee Approved Plant List for suggestions. The UF/IFAS plant list is not all-inclusive, and many plants not listed may be Florida-Friendly as long as they match site conditions and are not invasive exotics. By the same token, many plants that are listed may be unsuitable in some locations. Where doubt exists, the Landscaping Committee should refer the matter to the UF/IFAS County Extension Service Florida Yards & Neighborhoods agent or the Commercial Horticulture agent for assistance. However, the role of these agents is strictly educational, and all final decisions about plantings are to be made by the Association.

2.4.4 Community ButterflyScaping. Homeowners are encouraged to preserve and enhance existing butterfly host vegetation on their properties.¹⁰²

2.4.5 Turfgrass. Homeowners will be allowed to follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection Green Industries Best Management Practices recommendations for turfgrass, including (a) selection of grasses that may be maintained through use of the low end of the maintenance recommendations for irrigation and fertilizer for the particular type of turf selected and (b) use of IPM in selection of pesticides. Turfgrasses shall be allowed to develop deep roots and enter a dormancy stage during the winter or drought periods. Turfgrass maintenance will be taken in terms of survival, not just maintaining a green appearance.

2.4.6 Appurtenances. Homeowners are encouraged to use rain barrels, cisterns, rain gardens, and compost bins, as needed, within the Florida-Friendly Landscaping™ design concept. The Association may not prohibit these items, but the Association may regulate the aesthetics of these items, including but not limited to placement.¹⁰³

2.5 Plant Installation.

2.5.1 Association Installation. All plant installations will be conducted in accordance with the most current version of the Florida Green Industries BMPs handbook guidelines.

¹⁰¹ Checklist available at http://fyn.ifas.ufl.edu/materials/FYN_Yard_Recognition_Checklist_2010.pdf

¹⁰² For more information, please see, "Community ButterflyScaping: Community ButterflyScaping: Move beyond butterfly gardening to create a large-scale butterfly habitat." available at http://fyn.ifas.ufl.edu/pdf/Butterfly_FlyerPrint_may_2010.pdf

¹⁰³ See Fla. Stat. § 720.3085 (2010)

2.5.2 **Homeowner Installation.** All Homeowner plant installations will be conducted in accordance with the most current version of the Florida Yards and Neighborhoods Manual.

2.6 **Mulching.**¹⁰⁴

2.6.1 **Florida Green Industries Best Management Practices.** All mulching will be conducted in accordance with the most current version of the [Florida Green Industries BMPs handbook guidelines](#).

2.6.2 **Placement.** Mulch will be placed at least 3–4 inches from the trunks of trees or the stems of landscape plants and will be maintained at a depth of 2–3 inches. Large mulched areas that slope to impervious surfaces or water bodies will be bordered by a turf or other groundcover to slow and absorb nutrient-laden runoff from the mulched area.

2.6.3 **Organic Mulch.** Organic mulch may require weeding and replenishment once or twice a year to maintain a total depth of 2–3 inches. Mulch will be applied to a tree's drip line or beyond at least an 8-foot diameter around the tree. Organic mulch and recycled mulch (including leaves, pine needles, grass, and shrub clippings) are recommended.

2.6.4 **Cypress Mulch.** Cypress mulch is often made from waste wood generated in manufacture of these products, but it may also be produced from whole trees cut from wetlands. The use of cypress mulch may not be recommended, as its origins may be difficult to determine.

2.6.5 **Inorganic Mulch.** Shell, crushed stone, or pebbles can be used as mulch but will not contribute to the soil's nutrient and organic content or water-holding capacity. Limestone and shell both raise soil pH and reflect heat, increasing the water needs of plants. If these products are used, they must be installed over top of a woven or other pervious ground cloth to keep them from sinking in sandy soils. These mulches last a long time, but will need to be cleared of debris to look their best.

2.6.6 **Surface Below Mulch.** Impervious surfaces, including plastic sheeting, will not be placed below mulch.¹⁰⁵ This does not prohibit the use of woven or other pervious ground cloth.

2.6.7 **Other Prohibited Ground Coverings.** White gravel, shells, and other similar light colored materials are prohibited as major landscape ground coverings in lieu of vegetation.¹⁰⁶ However such materials may be used as porous surfaces for walkways, patios or drives, for erosion control, mulches, or as landscaping accents. The HOA may regulate the

¹⁰⁴ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

¹⁰⁵ Placing plastic sheeting or any other impervious substance below mulch prevents water from being absorbed into the ground and can increase flooding.

¹⁰⁶ These materials increase the need for herbicide use, have no habitat value, reflect rather than absorb heat, and do not produce oxygen like plants. UF/IFAS, FDEP, et al., [Guidelines for Model Ordinance Language for Protection of Water Quality and Quantity Using Florida Friendly Lawns and Landscapes](#), 2009, available at <http://www.dep.state.fl.us/water/nonpoint/pubs.htm>.

aesthetics of such materials. Use of artificial turf is not consistent with Florida-Friendly Landscaping™ and is not recommended.

2.7 Landscape Maintenance Activities for Common Areas or Managed Areas

2.7.1 Fertilizer Use.¹⁰⁷

(a) **Definition.** Fertilizers are defined as any substance that contains one or more recognized plant nutrients and promotes plant growth; controls soil acidity or alkalinity; provides other soil enrichment; or provides other corrective measures to the soil.

This definition does not include unmanipulated animal or vegetable manures, peat, or compost that makes no claims as described in the above definition.¹⁰⁸

(b) **Scheduling and Quantities.** Fertilization scheduling and quantities will not exceed the “low maintenance” recommendations of the University of Florida Cooperative IFAS Extension Service.

(b) **Reclaimed Water.** If reclaimed water is used for irrigation in the Community, the Landscaping Committee will obtain reclaimed water nutrient content reports from the utility provider at least quarterly, and will disseminate those reports to all Homeowners and landscape contractors working in the Community. Landscapers and Homeowners will reduce nitrogen fertilizer applications appropriately. Unless tissue testing confirms a phosphorus deficiency, applications of fertilizer to turfgrass irrigated with reclaimed water will be limited to a grade of zero phosphate.

(c) **Application.** Fertilizers and pesticides may not be applied within a minimum of 10 feet from the edge of any water body, except as specifically permitted by the pesticide label and state law for aquatic pest control.¹⁰⁹ For the purposes of this section, water body includes, but is not limited to, creeks, lakes, ponds, rivers, streams, lagoons or stormwater retention areas not under the Water Management District jurisdiction, or those delegated to the Association by the Water Management District. All fertilizer spills or granules that may have been deposited on impervious surfaces will be collected or swept back into the vegetated area.

2.7.2 **Mowing.** Mowing in Common Areas and Managed Areas will be done in accordance with the most current version of the [Florida Green Industries BMPs handbook](#) and by certified landscaping contractors. Mowing adjacent to swales or water bodies will be performed

¹⁰⁷ This section was modified from the Model Conservation Declaration of Covenants, Conditions and Restrictions, University of Florida Conservation Clinic, May 2008

¹⁰⁸ Fla. Stat. § 576.011(12) (2010)

¹⁰⁹ Community Associations may wish to establish a buffer zone or low impact zone at a greater distance. Some local governments may have more restrictive ordinances. See TAMPA, FLA., CODE § 13-163 (2006). The removal of aquatic weeds from state waters requires an aquatic plant removal permit from FFWCC (additional information is available at <http://myfwc.com/nonnatives/InvasivePlants/index.htm>).

such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area.

2.7.3 Disposal of Landscape Material. Turf Clippings. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies.

2.8 Homeowner Maintenance. Homeowners are encouraged to conduct routine maintenance including fertilizer use, if needed, and mowing in accordance with the most current version of the [Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping](#)TM. Mowing adjacent to swales or water bodies will be performed such that no clippings are deposited into any swales or water bodies. All clippings that may have been deposited on impervious surfaces will be swept back into the vegetated area. Unless the turf is diseased, turf clippings will be left on turf areas or composted on-site to recycle nutrients. Any clippings or landscape material that fall on impervious surfaces such as sidewalks, driveways, or roads will be swept onto turf areas or composted. Turf clippings or landscape material will not be deposited in any swales or water bodies. Homeowners are encouraged to compost their vegetation for use on landscaped areas.

2.9 Landscape Maintenance Contracts.

2.9.1 All lawn maintenance contracts will follow the University of Florida Institute for Food and Agricultural Sciences and Florida Department of Environmental Protection [Green Industries Best Management Practices manual](#), and if needed, irrigation, fertilizer and pesticide applications must be at the low end of the maintenance recommendations contained in the most recent copy of the manual.

2.9.2 All contractors must employ Green Industries Best Management Practices-certified supervisors and applicators of fertilizer or pesticides. At least one certified person must be on site when work is being performed.¹¹⁰

3. Pest Control

3.4 Pesticide Application.

3.4.1 Preventive¹¹¹ blanket applications of pesticides are prohibited, except those performed as part of an IPM program in accordance with the most current version of the Florida Green Industries BMPs handbook or for termite prevention.

¹¹⁰ Maintenance companies do not become certified, only individual employees. Under the minimum requirement, the following certification is required: All supervisors and fertilizer/agrichemical applicators must be certified and all employees should be trained in the BMPs, but laborers that do not apply any chemicals, including fertilizer, need not pass the written examination and may work under the direct supervision of a certified person.

¹¹¹ Preventative applications are those which are done regardless of whether there are pest problems or not. Blanket applications may be used when necessary to cure an existing pest problem.

3.4.2 All pesticide applications in Common Areas will be done by a Certified Professional and in accordance with the most current version of the Florida Green Industries BMPs handbook.

3.4.3 Homeowners will use Integrated Pest Management for controlling pest problems and follow the most current version of the [Florida Yards & Neighborhoods Guide to Florida-Friendly Landscaping](#)TM.

3.4.4 All pest control companies servicing a Homeowner's property must have valid state and county licenses, follow Integrated Pest Management as prescribed in the Florida Green Industries BMPs handbook, and have a valid certification.

4. Irrigation

4.1 **Necessity of an Irrigation System.** Irrigation systems are not required.

4.2 **Design.**

4.2.1 **Lawns not requiring Irrigation Systems.** Where a Homeowner has designed and installed a lawn in accordance with Florida-Friendly LandscapingTM practices, if the Homeowner's property is irrigated only through a properly maintained and operated micro-irrigation system or by hand watering by hose, rain barrels or cisterns, the Homeowner may in certain circumstances be exempt from additional irrigation system requirements throughout the Homeowner's Association documents.

4.2.2 **Irrigation Design.** Where necessary, all irrigation systems will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida. The irrigation system will be designed so as to not overlap with water coverage zones, not to water impervious areas, and not to irrigate within 3 feet of the building foundation. The irrigation design will separate turf irrigation areas from landscape bed irrigation areas. All new irrigation systems shall meet the more stringent of the current requirements of Standards for Landscape Irrigation in Florida¹¹² and all current Water Management District (WMD) and local government requirements, in addition to current Best Management Practices as established by the most current version of the [Florida Green Industries BMPs handbook](#), including the uniform distribution of water throughout all zones.¹¹³ Before and during construction, the designer of the Irrigation System will approve in writing any changes to the irrigation design. A copy of the state Standards for Landscape

¹¹² See Fla. Stat. § 373.228 (2010) Available: http://www.dep.state.fl.us/water/waterpolicy/land_irr.htm; Please also see Florida Irrigation Society Standards and Specifications, publication available for purchase at <http://fisstate.org/publications.html>

¹¹³ This sentence should refer to the most current version of the Standards and Florida Green Industries BMPs manual and not to a specific set of guidelines since new revisions of the Standards and the BMPs manual will eventually come out.

Irrigation in Florida is available from Florida Department of Environmental Protection (FDEP) or the local Water Management District.¹¹⁴

4.3 **Irrigation Plan & Operation Manual.**¹¹⁵

4.3.1 The Landscaping Committee will develop an irrigation plan for the Community Managed Areas or Common Areas that includes, but is not limited to, an irrigation system layout identifying the location of the irrigation system components, irrigation times and maximum irrigation application rate per lawn, area, or zone.¹¹⁶

4.4 **Installation**

4.4.1 New irrigation systems in the Community will be installed according to the state Standards for Landscape Irrigation in Florida and will meet or exceed all state and local regulations. The irrigation systems of any areas that do not have local irrigation regulations will, at a minimum, meet the state Standards for Landscape Irrigation in Florida.

4.4.2 **Rain Shut-off Devices or Soil Moisture Sensor Installation.** Any person who purchases and installs an automatic landscape irrigation system is required by Florida law¹¹⁷ to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.¹¹⁸ Rain shut-off devices, evapotranspiration-based (ET) controllers, or soil moisture sensors will be installed and operational for all in-ground irrigation systems. Rain shut-off devices will be placed in open areas to prevent incorrect readings. Flow meters, tensiometers, and other irrigation tools may be used to help make good irrigation management decisions.

4.4.3 **Plant Irrigation Upon Installation.** The irrigation will match the new space, and landscape beds and turf zones will be separate, when feasible. Landscape beds will be established with temporary micro-irrigation or irrigated by limited-handwatering or micro-irrigation only.

4.5 **Scheduling.**

4.5.1 The HOA will create and publish an irrigation schedule. If the Association does not employ innovative technology including, but not limited to, soil moisture sensors or ET Controllers, they will, for all Managed Areas and Common Areas managed by the

¹¹⁴ The standards for landscape irrigation can be found at the FDEP website at: www.dep.state.fl.us/water/waterpolicy/land_irr.htm

¹¹⁵ Where possible, Florida-Friendly Landscaping™ may not dictate a need for irrigation systems for individual Homeowners. In these instances, HOAs may want to eliminate this provision.

¹¹⁶ Other requirements may be added depending on how broad the association wishes the irrigation plan to be but the drafter should always be cautious and aware of local irrigation laws or rules. The plan should include exceptions for newly installed landscaping, which usually requires more frequent irrigation timing.

¹¹⁷ Fla. Stat. §373.62 (2010)

¹¹⁸ Pursuant to Fla. Stat. §373.62(1) (2010); Any person who purchases and installs an automatic landscape irrigation system must properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture.

Association, create an irrigation schedule consistent with the UF/IFAS Extension irrigation scheduling recommendations to the extent that they meet or exceed state and local law.

4.5.2 In developing an irrigation schedule, the Association will take into account seasonal plant water requirements, recent rainfall, recent temperature extremes, and soil moisture.

4.5.3 The Association will, in accordance with the Irrigation Schedule, manage the irrigation systems used in the Common Areas and Managed Areas. The Association will account for and exempt newly installed landscaping in the irrigation schedule.

4.5.4 If reclaimed water is used for irrigation in the Community, the Association must comply with the requirements of Section 2.9.1(c) and incorporate the results of the water nutrient content reports into irrigation schedules as necessary to achieve appropriate reductions in nitrogen fertilizer application.

4.6 **Preventative Maintenance Program.** For Common Areas and Managed Areas, the Association will implement a preventative maintenance program that includes but is not limited to the following:

- 4.6.1 replacing worn or broken components,
- 4.6.2 identifying and repairing leaks,
- 4.6.3 identifying and repairing broken or faulty sprinkler heads,
- 4.6.4 identifying and repairing system malfunctions,
- 4.6.5 periodically calibrating irrigation system to determine proper watering time,
- 4.6.6 periodically monitor water bodies to detect sudden increase in algae growth, and
- 4.6.7 performing weekly visual inspections to identify excessive runoff, including standing water.

4.7 **Irrigation System Maintenance.**

4.7.1 Irrigation systems will be continuously maintained in working order so that the application rate of water, including reclaimed water, to landscape and grass does not exceed the ability of the soil to absorb and retain water applied during one application, and to prevent irrigation of impervious surfaces.

4.7.2 Homeowners will comply with the requirements of this Article and will maintain the irrigation systems within their Property boundaries.

4.7.3 The Association will within the Common Areas and Managed Areas, make monthly inspection of all automatic irrigation systems for operating defects, periodically calibrate all automatic irrigation systems, and seasonally reset the irrigation controllers or timers to account for changes in plant growth and local weather conditions.

4.7.4 The irrigation system will meet or exceed the rules of the State, the controlling Water Management District and the local government.

4.7.5 If a Homeowner's irrigation system does not function properly, the Association may correct this problem.

4.7.6 Rain Shut-off Devices or Soil Moisture Sensor Maintenance.

(a) The Association will maintain rain shut-off devices or soil moisture sensors in all the Common Areas and Managed Areas in accordance with state law.

(b) The Homeowners will maintain the shut-off devices or soil moisture sensors within their property boundaries in accordance with state law, if such devices are not managed by the Association.

(c) A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.¹¹⁹

¹¹⁹ Pursuant to Fla. Stat. §373.62(2)(2010); A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.