

Chapter 98

TREE PROTECTION*

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ARTICLE I. GENERAL PROVISIONS

Sec. 98.01. Short title.

This chapter and the provisions contained herein shall be known as the tree protection chapter. (Ord. 306, 12-20-84)

Sec. 98.02. Purpose.

(a) Trees, as defined in section 98.03, are declared to provide or maintain beneficial public resources, and it is the intent of the town council to protect them in the interest of the health, safety, and welfare of present and future citizens of the town. It is further intended to perpetuate adequate tree numbers and canopy in order to maintain the economic, environmental, and esthetic status of the town.

(b) To this end, it shall be unlawful to cut down, damage, poison, or in any other manner, destroy or cause to be destroyed any tree, mangrove, or other vegetation as covered by the provisions of this chapter except in accordance with the provisions set forth herein. Notwithstanding, in case of emergencies involving natural disasters such as, but not limited to, hurricane, windstorm, flood, freeze, or other natural disasters, the requirements of this chapter may be waived by the town manager.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.03. Definitions.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Diameter at breast height (DBH). The standard measure of a single-stemmed tree at four and one-half feet above grade adjacent to the tree. When a tree has grown with cluster stems at breast height, *DBH* shall be equal to the sum or aggregate of the individual stems measured at four and one-half feet above grade.

Drip line. An artificial line along the ground which conforms to the perimeter of the crown of a tree and projects vertically to the ground.

Grubbing. The removal or destruction of any living rooted shrubbery; the denuding of a parcel

by digging, raking, or dragging; or activities which disturb the roots of the vegetation or the soil in which the roots are located in a manner which is calculated to result, or likely to result, in the death, destruction, or removal of the vegetation.

Heavy machinery. Mechanical land clearing, earth-moving, or earth-working equipment with a gross weight in excess of 5,000 pounds. For purposes of this chapter, all machinery which utilizes steel tracks for traction shall be considered to be *heavy machinery*.

Historic tree. A tree which has been found by the town council to be of notable historic interest to the town based on its age, species, size, or historic association with the town.

Land clearing. The removal or grubbing, by any means, of any type of vegetation from land not including, however, activities governed by tree removal or mangrove alteration permits.

Mangrove. Rooted trees and seedlings of the following species, but only when having a coastal or estuarine association.

Red mangrove, (*Rhizophora mangle*); Black mangrove, (*Avicennia germinans*); White mangrove, (*Laguncularia racemosa*); Buttonwood or Button mangrove, (*Conocarpus erecta*).

Mangrove, juvenile. A single-stem mangrove with a one-inch or less diameter at breast height.

Protected area. An area surrounding a protected, historic, or specimen tree within which physical intrusion is prohibited in order to prevent damage to the tree, roots, and soil around the tree base, the dimensions of which shall be established by the tree protection officer and set forth in the tree removal permit, in accordance with sections 98.60 through 98.63.

Protected tree. All trees and all significant groupings of trees of the West Indian or tropical origin of any size, and all mangroves regardless of size; excluding, however, the following trees, regardless of size or location.

Australian pine, (*Casuarina cunninghamiana*); Australian pine, (*Casuarina lepidophlia*); Australian pine, (*Casuarina equisetifolia*); Ear-pod tree, (*Enterolobium cyclocarpum*); Chinaberry, (*Melia*

azedarach); Brazilian pepper tree, (*Schinus terebinthifolius*); Melaleuca, punk or paper tree, (*Melaleuca leucadendron*).

Cabbage palms (*Sabal palmetto*) and citrus trees of all varieties shall not be considered to be protected trees, but these trees shall be included in the tree survey in the event the applicant chooses to make use of the trees as a credit against the trees otherwise required under an applicable landscaping regulation or requirement. If so designated, these palms or citrus trees shall become protected trees under this chapter with requirements of Ordinance No. 280.

Protective barrier. Shall be made of one inch to two inch wide stakes spaced a minimum five feet to eight feet and 18 inches to 24 inches above ground with top two inches to four inches marked by fluorescent orange paint or tape.

Remove or removal. The actual physical removal or the effective removal through damaging, poisoning, or other direct or indirect action resulting in or likely to result in the death of a tree.

Specimen tree. A tree which is determined by the town council, based on the advice of a professional forester, landscape architect, arborist, horticulturist, or other similar professional to be of high value to the community, because of its type, size, age, or other significant tree characteristics.

Tree. A woody plant having a well defined stem, a more or less well defined crown, and which has attained a height of at least eight feet with a trunk diameter of not less than three inches, or a cluster of main stems having an aggregate diameter of not less than three inches, at a point four and one-half feet above ground.

Tree of special concern. A tree of special concern is any protected tree with a diameter at breast height (DBH) of 32 inches or greater.

Tree protection officer. The individual employed by the town who is responsible for the administration of the provisions of this chapter and prosecution of any violations thereof. The tree protection officer shall have undertaken an advanced course of study from an accredited university or college in either landscape architecture, horticulture, forestry, or botany, or other related study

areas, and have at least three years of significant work-related experience in a land development or construction industry, or environmental regulation setting with direct interface with the land development or construction industry. The tree protection officer may have a bachelor's degree in urban planning from an accredited college or university with at least three years of significant work-related experience in the landscaping, horticulture, forestry, or environmental protection setting, provided the experience involved direct contact or interface with the land development or construction industries.

Tree survey. Either a physical on-site survey and plot or an aerial survey is acceptable. An aerial photograph taken within one year prior to application must be to a scale no smaller than one inch to 50 feet or greater which shows the location of all trees located on a given parcel of land intended for development or site planning as a contiguous property of the applicant which is to be included within the actual limits of the area subject to development consideration. An overlay of the proposed development will accompany the tree survey.

(Ord. 306, 12-20-84; Ord. 346, 9-25-86; Ord. No. 444, § 1, 9-25-97; Ord. No. 451, § 1, 12-17-98)

Sec. 98.04. Authority.

This chapter is enacted pursuant to authority vested in the town council by virtue of Article VIII, Section 2(b) of the Constitution of the State of Florida, F.S.A. §§ 166.021(1) through (4) and 163.3201.

(Ord. 306, 12-20-84)

Sec. 98.05. Applicability.

This chapter shall be applicable to all land lying in the incorporated area of the town. (Ord. 306, 12-20-84)

ARTICLE II. GENERAL PROHIBITIONS; EXEMPTIONS

Sec. 98.15. General prohibitions.

Unless expressly exempted herein, it shall be unlawful and subject to the penalties provided herein for any person directly or indirectly by another on his behalf to:

(a) Remove, relocate, destroy, or damage, any tree on any site or tract without first obtaining a tree removal permit or man-grove alteration permit pursuant to this chapter.

(b) Perform any land clearing or grubbing unless a land clearing permit has been issued pursuant to this chapter.

(c) Encroach onto protected areas established pursuant to this chapter by any of the following acts or omissions:

(1) Trenching, digging, movement or storage of any vehicle within or across a protected area.

(2) The storage of building materials, debris, fill, soil, or any other matter within a protected area.

(3) The cleaning of material or equipment within a protected area.

(4) The disposal of any liquid or solid waste material such as paints, oil, solvents, asphalt, concrete, mortar, or other materials similarly harmful within a protected area.

(5) The placement of any structure or site improvement within a protected area.

(d) Violate or fail to observe any of the requirements set forth in sections 98.25 through 98.28 pertaining to tree and man-grove protection.

(e) Violate or fail to observe any of the requirements or provisions set forth in sections 98.45 through 98.50 pertaining to the protection of dune and shoreline vegetation.

Sec. 98.16. Exemptions.

Notwithstanding anything to the contrary in this chapter, the following activities shall be lawful without application for or issuance of a tree removal or land clearing permit. None of these exemptions shall apply to any mangrove, nor shall they apply to dune vegetation. Burden of proving entitlement to any particular exemption shall lie with the person claiming use of the exemption, in the event the exempted activity ever becomes subject to an enforcement proceeding.

(1) Limited pruning (excluding mangroves). This includes the limited pruning and trimming of any tree or other vegetation as necessary for the clearing of a path not to exceed four feet in width to provide physical access or view necessary to conduct a survey or site examination for the preparation of subdivision plats, site plans, or tree surveys, provided the clearing or removal is conducted under the direction of a state registered surveyor or engineer.

(2) Restricted landscape maintenance. This includes routine landscape maintenance such as trimming or pruning of vegetation which is not intended to result in the eventual death of a plant, mowing of yards or lawns, or any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement. This exemption shall be construed to allow routine maintenance of dune vegetation growing seaward of the coastal construction control line, provided the person owning the property, or his agent, first provides sufficient documentation evidencing express permission for such activity from the Bureau of Beaches and Shores of the Department of Natural Resources of the state.

(3) Work by utility service. This includes the removal, trimming, pruning, or alteration of any tree or vegetation in an existing utility easement or right-of-way provided the work is done by or under the control of the operating utility company and the

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

company has received all necessary licenses or permits to provide utility service within the easement.

(4) Minor alteration to preserve existing access. This includes the removal, pruning, trimming, or alteration of any tree or vegetation for the purpose of maintaining an existing access to a property with minimum necessary alteration to natural vegetation.

(5) Damaged trees. Any tree which has been destroyed or damaged beyond saving by natural causes or causes not covered by other sections of this chapter, or which constitutes an immediate peril to life, property, or other trees, may be removed without a permit.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

ARTICLE III. PERMITS

Sec. 98.25. Permits available.

The following permits with stated limitations shall be available upon proper application to the tree protection officer and compliance with this chapter.

(a) Tree removal permit. A tree removal permit shall not authorize the destruction of a mangrove unless the criteria governing mangrove alteration is satisfied.

(b) Land clearing permit. A land clearing permit does not authorize the removal or destruction of protected trees, nor does it authorize any alteration to a mangrove.

(c) Mangrove alteration permit. No mangrove shall be altered unless the tree protection officer has issued appropriate permits based on a determination that all criteria governing both tree removal and mangrove alteration permits has been satisfied.

(Ord. 306, 12-20-84)

Sec. 98.26. Criteria for issuing permits.

The following criteria shall be satisfied prior to issuance of a tree removal, mangrove alteration, or land clearing permit, respectively.

(a) Criteria for issuing a tree removal permit. In determining whether or not a permit required by this chapter should be issued, the tree protection officer shall consider the following criteria.

(1) The condition of the tree with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures, and interference with utilities services.

(2) The necessity of removing a tree to construct proposed improvements in order to allow reasonable economic use of the property.

(3) The topography of the land where the tree is located and the effect removal of the tree would have on erosion, soil moisture retention, increased or decreased flow or diversion in the flow of surface waters, and the impact on overall surface water management.

(4) The number and density of trees existing on-site.

(5) The relative significance or uniqueness of the tree as a historic or specimen tree.

(6) The impact on the natural environment, including ground and surface water stabilization, water quality and aquifer recharge, ecological impacts, noise buffer, air quality, and wildlife habitat.

(7) The ease with which the applicant can alter or revise the proposed development or improvement in order to accommodate existing mangrove or trees.

(8) The economic hardship which would be imposed upon the applicant should the permit not be granted.

government mosquito control program as referenced in F.S.

§ 403.817(2) shall experience a property loss or gain because of vegetative changes due to mosquito control activities conducted on his property, provided these activities are not have been undertaken as part of a governmental mosquito control program.

b. In such cases where mangrove alteration, removal, and/or replacement permits are requested as part of a program to dredge or fill a mosquito impoundment area, the town may mandate partial restoration and/or replacement of mangroves and/or estuarine plants in order to stabilize shorelines in the impacted area. The town shall assure that related dredge and fill activities provide for and/or preserve a continuance in the circulation and flushing action of waters impacting wetlands. To this end, dredge and fill activities surrounding mangrove alteration shall not create isolated wetlands.

(c) Replanting and hedging program. Notwithstanding the criteria of division (b) above, the property owner/applicant may elect a replanting and hedging program, under the direction and control of the tree protection officer, and under which juvenile mangroves may be hedged several times each year and maintained at a height after periodic hedging of three feet without a permit. Such routine hedging shall be restricted to the new growth on mangrove hedges not exceeding 18 inches in height. If new growth is allowed to exceed 18 inches, subsequent trimming shall require a permit. As a mandatory and integral part of any routine hedging of mangroves, hedged material (clippings) shall be left atop the hedged mangroves until

leaf drop from the hedge material (clippings) has occurred. The dropped leaves shall then become part of the estuary food chain.

(d) Criteria for issuing a land clearing permit. In determining whether or not to issue a permit to clear or grub land as required by this chapter, the tree protection officer shall consider whether the applicant has or is complying with all tree and land clearing provisions of this chapter and shall base a decision regarding issuance of a permit on the following criteria:

(1) The minimum necessary vegetation removal on the property for purposes of land surveying or land preparation for development or other economic uses.

(2) Whether visual access is necessary to comply with the tree survey requirements in section 98.29(c).

(3) Whether the applicant has provided protective barriers around all protected trees on the site or will utilize light machinery, which does not penetrate or severely compact the soil, for clearing understory vegetation in protected areas.

(4) The impact upon natural and manmade systems including erosion and surface water management and other impacts identified in section 98.26(a).

a. To this end the applicant shall provide a reasonable written plan for controlling erosion which may be expected to occur as a result of the proposed clearing or grubbing.

b. The plan shall incorporate some or all of the following measures necessary to achieve soil stabilization, prevent erosion, and promote efficient surface water management, including: temporary seeding and mulching, sodding, diversion berms, intercep-

- (9) If, during the review process, the tree protection officer determines any tree to be a tree of special concern as defined in this chapter, then a permit shall not be issued, if the tree is found to be outside the approved building structures perimeter, or in an area in which a swimming pool, spa, deck, driveway, roadway, detached building, or other approved construction is located or is to be located, referenced as the building area. In the event the tree of special concern is located outside the building area, then the request for the issuance of the tree removal permit shall be submitted to the planning, zoning and variance board to determine whether the permit should be granted. The planning, zoning and variance board shall determine whether the location of any improvement can be reasonably made without the necessity of removing the tree of special concern. If a reasonable alternative exists to adjust the building area, then the permit may be denied.
- (b) Criteria for issuing a mangrove alteration permit. In determining whether or not to issue a permit, as required by this chapter to alter a mangrove, the tree protection officer shall consider not only tree removal criteria of division (a) above, but shall also consider the following criteria and incorporate them as conditions of the permit if issued. A violation of any of these provisions shall be deemed to be unlawful and subject to all penalties provided for herein.
- (1) At least 50 percent of the original canopy of any mangrove trees shall be continuously retained.
 - (2) White mangroves and buttonwood shall not be trimmed at all at a distance less than three feet above the natural ground elevation.
 - (3) On red mangroves, no prop roots shall be damaged, removed, or buried by fill or other means.
 - (4) Red mangroves may be hedged down to a minimum height of six feet, providing the limitations in divisions (1) and (7) are not exceeded. Notwithstanding, juvenile red mangroves may be hedged down to a minimum height of three feet, providing the limitations in division (7) are not exceeded.
 - (5) On a black mangrove of ten feet or less in height there shall be no cutting or trimming below the lowest two living lateral limbs, unless a significant canopy area is left at the top of the tree. Further, no pneumatophores shall be damaged or removed nor shall they be buried by fill or other means.
 - (6) No large mangrove cuttings shall be discarded into any estuary, marsh, river, or adjacent water course.
 - (7) Pruning, removal, and relocation of mangroves shall be prohibited between December 1 and February 15.
 - (8) All cuts shall be made cleanly and at the base of the branch or limb cut, except when done with respect to the shaping of a hedge.
 - (9) A mangrove alteration permit shall not authorize removal of any mangrove unless the applicant replaces or relocates that number of mangroves necessary to revegetate an area approximately equal to the area destroyed, on the same development site. The applicant must provide an affirmative program satisfactory to the tree protection officer to assure survival of the replaced or relocated mangroves and to stabilize the shoreline from which mangroves were removed. The approved program shall be considered an express condition of the permit.
 - a. Notwithstanding the above provision, pursuant to F.S. §403.817(2), no owner of land which is part of an authorized

(4) *Minimum standards for replacement trees.* All replacement trees must have a minimum overall planted height of eight feet at the time of planting and a Florida Department of Agriculture Nursery Grade Standard (quality) of No. 1 or better.

(5) *Transplanting and maintenance requirements.* All trees transplanted pursuant to this chapter shall be maintained in a healthy, living condition. Any trees which die shall be replaced by the applicant. The tree protection officer shall retain jurisdiction to insure compliance with this section.

(6) *Waivers of replacement tree specifications.*

a. The tree protection officer may waive the size or minimum standards specifications if the applicant can demonstrate that the current market conditions are such that replacement tree or trees meeting these specifications are not readily available.

b. Similarly the number of required replacements may be waived by the tree protection officer if the tree protection officer determines that the remaining number of trees to be preserved on-site are of sufficient number and quality to substantially comply with the purpose and intent of this chapter.

c. Substitute trees allowed under this waiver provision must have the approval of the tree protection officer.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.29. Information required for application.

Application for issuance of any permit required by this chapter shall be made in writing to the town building official on a form provided by the town. The form shall request all information necessary to evaluate a particular application including, but not limited to, the following.

(a) A statement as to the applicant's interest in the property and reasonable proof of ownership.

(b) A legal description of the property and a boundary survey or accurate scaled drawing thereof.

(c) A tree survey indicating all trees and including those trees that are intended for removal, relocation, or alteration in any way and those which will be left undisturbed. A written explanation shall be included with the tree survey which identifies those criteria in sections 98.25 through 98.28 which justify issuance of the requested permit.

(d) If land clearing is intended, an erosion control plan as described in section 98.26(a)(3), together with reasons for clearing or grubbing of the site.

(e) The application shall be submitted and processed concurrently with site plan review or subdivision approval, as the case may be, when the approvals are otherwise required to make use of the property. The site plan or subdivision preliminary plat shall be prepared in a manner to allow ready comparison with the tree survey to assess whether the cited criteria have been met. All items shown shall be properly dimensioned, scaled, and referenced to the property lines, easements, and setback or yard requirements. If known, existing and proposed site elevations and major contours shall be included.

(f) An administrative fee to offset the cost of evaluating the application shall be collected in an amount determined by resolution of the town council. A copy of the state tree protection manual for builders and developers will be issued to each applicant for use as a guide to development.

(Ord. 306, 12-20-84)

Sec. 98.30. Inspection by tree protection officer.

The filing of an application shall be deemed to extend permission to the tree protection officer to inspect the subject property if necessary for purposes of evaluating the application.

(Ord. 306, 12-20-84)

tor ditches, sediment barriers, sediment basins, and related appurtenances or devices.

- c.e All provisions of an erosion control plan shall be incorporated as express conditions of the land clearing permit issued and a violation of any of the conditions or provisions of the plan shall be considered a violation of this chapter, and subject to all enforcement provisions.e

- (e)e Required written supportive documents.e The tree protection officer may require written elaboration of a proposed plan prior to issuance of any type of permit herein required by this chapter in order to clarify the nature and design of measures intended by the applicant.e

(Ord. 306, 12-20-84; Ord. 346, 9-25-86; Ord. No. 451, § 2, 12-17-98)

Cross reference—Penalty, § 98.99.

Sec. 98.27. Approval or denial of permit.

(a)eThe tree protection officer shall only issue a tree removal, mangrove alteration, or land clearing permit upon a finding that all applicable requirements of this chapter have been satisfied including criteria for issuance as set forth in section 98.26 as well as provisions governing required replacements in section 98.28. No permit shall be granted if the tree protection officer determines that any one of the following conditions exists.

- (1)e Ability to reasonably shift location of proposed improvements. The applicant can reasonably shift the location of the structure, building, or improvement which he wishes to construct on the site, while maintaining the existence of the subject trees or mangroves and still permitting the construction of the building or improvement on the site.e
- (2)e Ability to reasonably modify design concept. The applicant can reasonably modify the design of a structure, building, or other improvement which he wishes to construct on the site while maintaining

the existence of the trees or mangroves proposed to be removed and still permit construction of a substantially similar building on the site.

- (3)e Land clearing or removal generates substantial adverse impact. The land clearing or the removal of the subject trees or mangroves will have a substantial adverse impact on the urban and natural environment.e

(b)eIf the tree protection officer denies the removal permit he shall set forth with particularity his reasons for the denial in writing.

(c)eA copy of all permits issued pursuant to this chapter shall be maintained on site. Such permits shall be made visible on site for inspection and shall be contained within a protective cover.
(Ord. 306, 12-20-84; Ord. 346, 9-25-86)

Sec. 98.28. Replacement or relocation of trees.

As a condition to granting a permit, the applicant shall be required to relocate or replace a tree being removed at the applicant's expense. The specifications regulating the replacement of trees are cited below.

- (1)e *Characteristics of replacement trees.* The replacement tree or trees shall have at least equal shade potential, screening properties, or other characteristics comparable to that of the tree or trees requested to be removed.e
- (2)e *Size of replacement trees.* The replacement tree or trees are to be made according to a standard of one inch diameter at breast height (DBH) total replacement for each one inch DBH removed, unless otherwise agreed upon by both the tree protection officer and the applicant. Any number of trees may be utilized to meet the inch-for-inch requirement provided acceptable spacings and design are maintained.e
- (3)e *Tree species.* Relocated or replacement trees shall include only species defined as protected trees under this chapter.e

Sec. 98.31. Period of review.

(a) For those applications which are not being processed concurrently with site plan or subdivision approval, the planning, zoning, and variance board shall have 14 working days following receipt of a completed application within which to make a determination on whether a permit shall be issued as requested.

(b) If the permit is not issued, the board shall state in writing the reasons for denial and advise the applicant of any appeal remedies available.

(c) For good cause, the tree protection officer may request an extension, the period to be determined by the board, in which to make a determination, provided the extension is requested prior to expiration of the initial 14-day period.
(Ord. 306, 12-20-84)

Sec. 98.32. Permit expiration.

(a) Any permit issued hereunder shall remain valid for a term of 30 days and may be renewable for a second period of 30 days upon request to the tree protection officer.

(b) The tree protection officer may require reapplication and full review in those renewal cases where site conditions have changed substantially from the date of issuance of the initial permit as a result of natural growth of trees and vegetation, or high winds, hurricane, tornado, flooding, fire, or other act of God.

(c) If a permit required by this chapter has been issued concurrently with site plan or subdivision approval, then the permit shall run concurrently with the site plan or subdivision approval and shall be renewed together therewith.
(Ord. 306, 12-20-84; Ord. 346, 9-25-86)

ARTICLE III. TREE TRIMMING**Sec. 98.40. Standards adopted by reference.**

The National Arborist Association standards for pruning, guying, fertilizing, lightning protection and spraying for shade and ornamental trees is hereby adopted by reference for the town as fully as if set out at length herein.
(Ord. 306, 12-20-84)

ARTICLE IV. ADDITIONAL DUNE AND SHORELINE VEGETATION PROTECTION**Sec. 98.45. Purpose.**

In order to protect the natural vegetation and the main dune bluff fronting on the Atlantic Ocean, the restrictions in this subchapter shall be observed.

(Ord. 306, 12-20-84)

Sec. 98.46. Construction seaward of coastal construction control line prohibited.

(a) No structure shall be located seaward of the coastal construction control line established by the Department of Natural Resources pursuant to F.S.A. Ch. 161, as may be amended from time to time, except as provided elsewhere in this chapter.

(b) This provision shall be construed to establish a local setback ordinance within the meaning of Florida Administrative Code Chapters 16B-25 and 16B-33, as may be amended from time to time.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.47. Encroachments of coastal construction control line prohibited.

(a) Except as provided herein, encroachments or ingress onto or any disturbance of the main dune or natural vegetation seaward of the state coastal construction control line is prohibited, including encroachment or disturbance caused by individuals upon foot or by vehicle of any kind.

(b) At the time of the initial site inspection, the coastal line shall be marked denoting this protected zone.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.48. Allowable dune crossovers.

No structure, other than an elevated bridge or dune crossover, or observation tower constructed in the interest of public safety, may be located seaward of the coastal construction control line.

The design of any such allowed structure must be approved in advance by the Department of Natural Resources, Bureau of Beaches and Shores or its successor, and the planning, zoning, and variance board of the town.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.49. Prohibited use of vehicles.

Except as expressly provided in section 98.50, it shall be unlawful for any person to operate, drive, or propel any truck, tractor, bulldozer, grader, crane, automobile, motorcycle, dune buggy, moped, minibike, all-terrain cycle, or any other vehicle seaward of the coastal construction control line; excluding, however, any of the aforementioned vehicles when operated by the state or a political subdivision of the state.

(Ord. 306, 12-20-84)

Cross references—Penalty, § 98.99; operation of vehicles on beaches, § 70.02.

Sec. 98.50. Leeway zone.

(a) Notwithstanding the foregoing provisions, during construction in the vicinity of the main dune, an applicant who has received the express written approval of the Bureau of Beaches and Shores of the Department of Natural Resources to carry on construction activity seaward of the coastal construction control line may make use of a leeway zone of up to 15 feet seaward of the control line for those activities related to construction of improvements up to or landward of the control line.

(b) No permanent improvement or structure may be made in the leeway zone and, prior to encroachment therein, a temporary barrier running parallel to the coastal construction control line shall be placed at the most seaward extent of the leeway zone to identify the limits beyond which no encroachment of any kind may occur. All activities related to construction of an approved dune crossover or elevated bridge shall be governed by the authorization given under section 98.48.

(c) All proposed activity within the 15-foot leeway zone shall be described in writing and submitted to the planning, zoning, and variance

board for prior approval, in addition to the approval by the Bureau of Beaches and Shores required above.

(d) Approvals required under this section may be obtained concurrently with site plan or subdivision approval, as the case may be, but must be obtained in any event prior to the scheduled activity.

(e) The leeway zone shall be revegetated with natural indigenous dune vegetation upon completion of construction activities and prior to the issuance of any certificate of occupancy for the subject improvements.

(f) The applicant remains responsible for successful reclamation of the dune vegetation temporarily destroyed under this section.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

ARTICLE V. PROTECTED AREAS

Sec. 98.60. Determination of protected area.

(a) The tree protection officer shall review each application, and may inspect each site, for the purpose of making a determination as to the appropriate protected area to be designated for those protected trees on a given site.

(b) The protected area shall be established based upon consideration of the species, age, size, condition of the tree, or soil condition, topography, means of protective barrier proposed, or other relevant criteria, and shall be established for the purpose of protecting the roots and trunk of a protected tree both during and after construction.

(c) In no event shall the protected area exceed the drip line of the canopy area, nor shall the protected area be less than an area measured five feet radially from the center of the tree at its base.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.61. Protective barriers.

A protective barrier shall be placed around all protected trees prior to land preparation or construction activities according to the following.

(1) Protective barriers shall be placed at or greater than a six-foot radius of all species of mangroves.

- (2)e Protective barriers shall be placed at ore greater than the full drip line of all protected native pine trees.e
 - (3)e Protective barriers shall be placed at ore greater than two-thirds of the drip line of e all other protected species.e
 - (4)e Protective barriers shall remain in placee until all construction activities are terminated.e
 - (5)e No equipment, chemicals, soil deposits, ore construction materials shall be placede within the protective barriers.e
- (Ord. 306, 12-20-84)
Cross reference—Penalty, § 98.99.

Sec. 98.62. Use of machinery.

Land clearing and landscaping activities conducted prior to the installation of or subsequent to the removal of protective barriers, shall be accomplished with light machinery (weight under 5,000 pounds) or hand labor. This light machinery shall not penetrate or severely compact the soil in clearing understory vegetation within protected areas where protective barriers are not in place.
 (Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.63. Markings.

Signs, building permits, wires, or other attachments of any kind shall not be permitted to be attached to any protected tree. Guy wires designed to protect trees are excluded from this prohibition.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

ARTICLE VI. ADMINISTRATION AND ENFORCEMENT

Sec. 98.70. Local permit not exclusive.

It is the intent of this chapter that permits or approvals required hereunder shall be in addition to and not in lieu of any federal, state, regional, or other local approvals which may be required for the same or similar activities. Compliance with

provisions of this chapter does not excuse any person for noncompliance with other applicable federal, state, regional, or local laws.

(Ord. 306, 12-20-84)

Cross reference—Penalty, § 98.99.

Sec. 98.71. Variances and appeals.

A variance from any of the substantive requirements of this chapter or an appeal of any administrative determination made by the tree protection officer may be obtained in accordance with the procedures set forth for relief under the current zoning ordinance. However, the planning, zoning, and variance board of the town shall be the board to which all variance requests or appeals are made.

(Ord. 306, 12-20-84)

Sec. 98.72. Tree protection as justification for variance relief.

Inasmuch as the requirements of this chapter have been determined to be of vital importance to the health, safety, and well-being of the community, the desire to preserve a protected tree, whether mandated by this chapter or not, shall be considered prima facie a unique or special condition or circumstance peculiar to the land involved for the purpose of application for a variance from the literal requirements of a land development ordinance, pertaining to building setbacks, parking space requirements, or minor or residential street right-of-way widths, provided adjustments are made elsewhere on the site to preserve the maximum permitted lot coverage and the total minimum number of parking spaces, and provided safety precautions are taken to offset any hazard resulting from decreased right-of-way widths.

(Ord. 306, 12-20-84)

Sec. 98.73. Effective date; effect on previously approved projects.

This chapter shall become effective upon adoption, December 20, 1984. Any project which has received final site plan or subdivision approval prior to the effective date of this chapter shall be considered exempt from its requirements, with

the exception of mangrove alteration or removal provisions which shall apply prospectively to all such activity beginning on December 20, 1984. (Ord. 306, 12-20-84; Ord. 312, 4-18-85)

an historic or specimen tree, mangrove, or any dune vegetation, contrary to this chapter shall receive the maximum penalty provided by law. (Ord. 306, 12-20-84)

Sec. 98.98. Remedy.

Any violation of this chapter is also subject to prosecution before the code enforcement board in accordance with applicable law and subject to penalties allowable under sections 30.80 through 30.92. In addition to either of the foregoing remedies, the town or any aggrieved party having a substantial interest in the protections provided by this chapter may apply directly to a court of competent jurisdiction for mandatory or prohibited injunctive relief. In any enforcement proceeding, the adjudicating body may consider mitigating measures voluntarily undertaken by the alleged violator, such as replacement or relocation of trees or vegetation or other landscape improvements, in fashioning its remedy. The adjudicating body may also require such restorative measures. The violator shall be assessed any costs associated with administering the violation, including but not limited to contracted consultant fees as well as any public costs associated with improvements underlying required replacement and/or relocation of trees, vegetation, or other landscaping improvements. If a landowner and/or other person or entity found in violation of this chapter fails to comply with mandated penalties, the town may deny issuing the subject violator any additional permits provided for in this chapter until the subject violator complies with assessments, penalties, and any other corrective measures imposed pursuant to this chapter.

(Ord. 306, 12-20-84; Ord. 346, 9-25-86)

Sec. 98.99. Penalty.

A violation of any provision of this chapter shall be punishable upon conviction by a fine not to exceed \$500.00, or by imprisonment in the county jail up to 60 days, or both a fine and imprisonment. The destruction or alteration of each tree or plant under this chapter shall be considered a separate offense. The destruction of