SECTION 9

UTILITY FEE REVIEW

CITY OF COCOA BEACH, FLORIDA
STORMWATER MASTER PLAN

PARSONS ENGINEERING SCIENCE, INC.

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UTILITY FEE REVIEW

Since 1992, developed real property lying within the City of Cocoa Beach has been charged a stormwater user-fee for the collection, conveyance and treatment of stormwater runoff. The fee is delivered to utility customers "piggybacked" on the City's monthly utility services bill. In most cases, the bill is mailed to the account owner of other utility services. Revenue collected by the stormwater utility provides a substantial portion of the City's stormwater management program budget, including operations and maintenance activities and capital improvement programs. In FY 1999, approximately $262,000 in stormwater user-charges was collected. The revenue has not been sufficient, however, to fund all of the needs of the stormwater management program and additional funding has been provided from general revenues and special project grants. The City recognizes that water resource challenges will increase and have established City goals of:

- **Meeting federally mandated National Pollution Discharge Elimination System ("NPDES") permit requirements**
- **Protecting certain federally designated "impaired water bodies" (the Indian River Lagoon and Banana River) to meet "TMDLs" (Total Maximum Daily Load) for certain pollutants**
- **Constructing, upgrading and expanding detention/retention facilities and piping systems in certain areas of the City**

The costs of meeting these challenges can be expected to increase with time. To meet these growing needs, the City must look to its stormwater utility or other funding sources. The purpose of this task of the City's Stormwater Master Plan Study is to:

- **Review the City's existing utility rate structure**
- **Compare the existing structure and rates with other Florida utility programs**
- **Assess the adequacy of current utility rates to fund emerging program needs**
- **Maximize opportunities offered by supplemental funding sources**

This report is divided into five subsections and an Executive Summary. The Executive Summary presents key findings and outlines recommendations developed in the body of the document. The first section reviews basic "best practice" user-charge based rate concepts and methodologies to provide a backdrop for reviewing the City's structure. The second section outlines the City's existing user-fee structure and provides recommendations for the City's consideration. The third section compares the City's utility program with other Florida utilities. The forth section identifies emerging program needs based on the stormwater master plan and assesses the rate ramifications of those needs. The final section provides recommendations and conclusions. Appendix A presents a detailed description of the mechanics of special assessments as a funding source. Appendix B lists stormwater utility rates adopted by communities throughout Florida. Appendix C presents a narrative description of alternative or supplemental funding sources.

9.1 USER-CHARGE BASED RATE METHODOLOGIES

Stormwater utilities have existed in the US since 1976, and in Florida in 1986 with the adoption by the City of Tallahassee of the State's first stormwater utility ordinance. Since that time, considerable strides have been made in defining and refining fundamental stormwater user-charge concepts that comprise an equitable and legally defensible utility. These fundamental concepts are a blending of legal, engineering, economic, public finance and utility theory as tested and refined through ten years of litigation in Florida courts, including the Florida Supreme Court. A basis framework has emerged that is unlikely to see substantial change in the foreseeable future.

9.1.1 The "Best Practice" Rate Model

This review is intended to compare the City's current ordinance and rate structure with existing "best practice" rate structures and to recommend modifications as relevant. To accomplish a comparative review, this Section describes the basics of a "best practice" rate structure to serve as a benchmark against which the City's current structure can be measured. An overview of this "benchmark" structure is presented in the following subsections. A comparison of the City's current rate structure to the "best practice" benchmark is provided in Section 3.

9.1.2 User-charge Themes

Sound user-charges are built around a carefully crafted rate structure. A solid stormwater rate structure is developed around two major themes:

- **The first theme is the "user pay" concept;**
- **The second theme involves the balance between simplicity and equity.**

The "user pay" concept - This concept moves the burden of paying for stormwater and floodway management services away from a taxation basis to a user-charge, where the amount paid by any given ratepayer varies with the benefit received.

The balance between simplicity and equity - The fairest rate structure would be one that addressed every conceivable factor which might be found on a parcel and which influenced the rate, quality or quantity of runoff generated by that parcel. However, such a design would be expensive to administer due to the data management requirements. The key is to balance the number of factors that influence the rate structure. Ideally, that balance will include enough factors to be considered "fair", yet result in a structure that is simple enough to be easily explained and cost effectively administered.

9.1.3 Developing a Rate Structure

Rate models form the heart of a rate structure. Virtually all stormwater rate models are based on "burden" or "contribution of runoff" passed to the community. These models themselves can be characterized as comprised of four basic forms:

- **Impervious area models**
- **Impervious plus weighted pervious area models**
- **Land use models**
- **Pollutant loading models**

Whatever the model, the mechanical design of a rate structure has to resolve two fundamental questions, triggering a two-stepped process:

- **Who pays for what services? (The "cost apportionment" issue)**
- **On what basis? (The "parcel apportionment" issue)**

Cost Apportionment addresses the question, "Which group of properties should pay for what services?" This step identifies exactly what program costs found in the jurisdiction's geographic service area the charge is to be imposed.

Parcel Apportionment addresses the question, "On what basis are the costs identified in the parcel apportionment step to be allocated to each parcel of property within the identified geographic area?"

9.1.4 Legal Considerations

All rate structures are ultimately constrained by the legal context within which they must operate. Several of the most fundamental legal points that directly impact the design of a user-charge-based methodology include:

Public purpose – all stormwater management programs, operations as well as capital, funded through the charge must serve a clear public purpose. All components of the rate structure must work to affect a clear public purpose.

Rational nexus/special benefit – as a user-based charge, the charge must show a reasonable relationship between the amount of service rendered to a customer and the amount of charge levied. This test is arguably more stringent for special assessments where court cases have clearly established that "special benefit" to the parcel must be demonstrated and the assessment must be "fairly and reasonably" apportioned to each parcel.

Reasonable/Not arbitrary – Florida courts test the adequacy of any component of a rate structure that is under challenge against a "not arbitrary" measuring stick; that is, each component of the structure must have a purpose and should be the result of logically based consideration of fact on the part of the legislative body enacting the charge. Specifically, the structure should not be inconsistent with basic tenants of

stormwater engineering science. Normal procedural and statistical rigor should be documented in the construction of the fundamental structure, in the determination of all categories, classes and groups, and in the calibration of numerical parameters.

Uniform/equal application of the law – All parcels or customers equally situated must be equally treated in apportioning costs to customers; exemptions, where used, must be awarded to all similarly situated customers.

Due Process – Were all requirements for public notice and hearings followed in a timely manner? Are customers provided reasonable access to billing data and allowed to correct billing data errors in a reasonable and timely manner?

9.1.5 Concept of Cost Apportionment

All utilities, including stormwater utilities, provide specific services within a defined geographic area. The determination of which stormwater management program costs will be recovered by the charge is this first step. Once the programmatic costs are determined, the area benefited by the services rendered by the utility must be carefully enumerated geographically. The stormwater utility service area should include all parcels and portions of parcels within the jurisdiction that are hydrologically tied to the existing stormwater management system (or any facility under construction or soon to be under construction.)

9.1.6 Connectivity and Defining the Service Area

The test of hydrologic connection – sometimes called the "rubber ducky" test - is rather simple: will a float (the "rubber duck") placed on a given parcel during a substantial rainstorm eventually find its way into a City of Cocoa Beach stormwater system? In the burden theory, the benefit to a given parcel varies proportionately with the runoff passed to the jurisdiction; parcels differently situated with respect to runoff benefit differently.

Hydrologic connection to the City's stormwater system is directly equivalent to a connection to a meter box for water service or the power grid for electrical service. Just as buildings with septic tank systems are not typically charged for sewer services, parcels that receive no specific stormwater management service from the City should not be charged for services.

9.1.7 Parcel Apportionment

Parcel apportionment focuses on the question, *"how is each parcel's share of the recoverable costs derived in the cost apportionment step to be determined?"* As described earlier, a parcel's share of costs is directly related to the benefit derived from the services or the facilities provided by the City in the collection, conveyance and treatment of stormwater.

9.1.8 Theory of Runoff Burden

Under the burden benefit model, the key to determining just exactly who benefits from a community's stormwater management is the concept of "burden." The burden model starts with the premise that virtually all property has the potential for generating stormwater runoff. Because almost all property generates stormwater runoff, the accumulated or aggregate runoff from all parcels must be managed in an organized and systematic manner if owners are to enjoy the use of their property with some degree of reliability.

The burden of the management of this accumulating stormwater runoff falls to the community. Stormwater systems and facilities must be constructed and maintained to reduce the undesired impacts of accumulated runoff. These systems and facilities are expensive. Each parcel *that is tied to this system* benefits from the investment.

Under this theory, the amount of runoff generated by a parcel and sent to a stormwater system represents that parcel's proportionate share of the burden of creating and maintaining the stormwater system. The cost of the stormwater management program, then, is a tangible, aggregate measure of the management by the community of the burden of runoff generated by each parcel.

Note that a subtle but crucial distinction is made between "general" benefit to the property and "special" benefit to the property. General benefit might accrue to all members of the community simply because each member can be assured of access along key transportation routes during substantial storm events. Likewise, control of flooding can lead to a reduction in water borne diseases and an improvement in the appearance of the community in general. This type of benefit is at a substantially "higher" level than that discussed here. Typically, user-charges must be identified with benefits more direct to the consumer than general benefits; the agency imposing the user-charge must tie the benefit to each customer. Indeed, those instances where such direct link cannot be made should be regarded as a "red flag" about the advisability of imposing a user-charge on that customer.

Parcels located atop a hill are just as benefited by the stormwater system as those located in low areas that flood, if they pass stormwater to the community system. Their *degree* of benefit is measured in terms of the amount of runoff generated by the property (rate, volume, nature and so forth) and passed to the community system - the greater the amount, the greater the benefit.

9.1.8.1 Runoff Burden Rate Models

While there are numerous variations of burden or contribution based rate models in use across the country, these variations boil down to four basic rate models:

Impervious Area Model – By far the most common of the rate models, especially in the last decade, the impervious area model is based on the observation that runoff is largely related to the amount of impervious surface (surfaces not easily percolated by water) on a parcel. Any given parcel's share of costs is, then, proportionate to the impervious surface of the parcel relative to that generated by a typical base unit, often a single-family residence.

The impervious area model has a solid theoretical base - on most parcels the amount of impervious area is clearly the predominate determinant of runoff in most situations. Credit policies and adjustment policies can be readily developed and easily incorporated into the basic model. The concept is rather easily explained to the public and is

generally readily understood and accepted as reasonable. Data needs, while rather narrow, are very specific and can be moderately expensive to achieve unless GIS planimetric mapping or property appraisal efforts have already generated reasonably good, current data. The model fits a broad range of stormwater management programmatic focus, including both quantity and quality oriented programs. This is the model the City currently uses in its rate structure.

Weighted Pervious Plus Impervious Area Model – This model is a variation of the impervious area model where runoff from *pervious* surfaces (surfaces that *can* be penetrated by rainwater) are added *on a weighted basis* to the impervious area. This model is more scientifically accurate than its simpler cousin, the impervious area model, in that it recognizes that under major storm events, pervious surfaces, once saturated, pass considerable runoff. Incorporation of "perviousness" into the rate base provides a sound basis for charging such properties as developed but vacant lands, agricultural lands, feed lots, landscape nurseries and the like (where imperviousness alone does not fully capture the capacity to generate runoff).

Of the four basic rate models, the weighted pervious plus impervious area model is the most firmly rooted in an engineering science theoretical base. It readily accommodates credit and adjustment mechanics. While more scientifically valid, the model requires considerable extra investment in data collection and data maintenance and is more difficult to explain to ratepayers. The model is most appropriately applied where substantial runoff flows into the community stormwater system from pervious lands (such as agricultural lands, golf courses or developed land with streets and roads in place) awaiting build out.

Land Use Model – The oldest of the rate models, the land use model is, in reality, a variation of the impervious area model where a parcel's land use is used to *impute* the amount of impervious area the parcel contains. "Coverage factors" are established for each of several land use classes, establishing average ratios between gross area and imperviousness for each class of parcels. More sophisticated versions of the model introduce a *density factor* to accommodate a range of coverages within a class. This model is best used when impervious area data do not exist or exist at too high a cost for the organization imposing the fee. With the rapid advances in GIS data over the past decade, most jurisdictions implementing a user charge tend to elect the more refined impervious area model.

The land use model is the simplest of the four rate models. Because of this, it is rather easily explained to the public. Its data demands are modest. However, because the heart of the model is the *imputing* of impervious area based on class overages rather than the direct measurement of such, the model does not accommodate credits and site-specific adjustments well, since each are grounded in direct measurement mechanics. This can become a problem over time in large jurisdictions with a broad range of site conditions and with parcels that contain large amounts of impervious area. Here, the capacity to make small adjustments in the interest of equity can have substantial effect on the magnitude of the bill – and the perception on the part of the owner that she is being fairly treated.

Pollutant Load Model – This model is similar in concept to the weighted pervious plus impervious area model except that a quality parameter or parameters such as nitrogen, phosphorus or turbidity form the base of the model rather than impervious area. Deviation from a standard ("x" pounds of nitrogen, for instance) for a given parcel (typically

determined by land use or standard industrial classification) forms the basis for the relative magnitude of the charge. This model is most applicable to jurisdictions focused almost exclusively on water quality oriented stormwater management programs.

Pollutant load models are targeted to the rather narrow but increasing audience that is wrestling almost exclusively with water quality issues, where investment in resolving the issues will be extensive and where a clear sense exists in the community that equity is best served in the cleaning of the water bodies by charging those who add the pollutants in proportion to their contribution. Fortunately, a great deal of work in creating general pollutant load models for federal Clean Water Act TMDL (Total Maximum Daily Load) analysis and water quality modeling purposes has been accomplished. Fitting these general models to local conditions can be rather expensive; otherwise, data needs are typically rather modest.

9.1.9 Exemptions

The granting of exemptions to certain classes of "users" may be provided as long as the remaining users are not asked to pay more than their fair share as a result of the exemption policy and so long as the exemptions are extended to all entities exhibiting similar characteristics. Current Florida statutes provide an exemption to public schools from the imposition of a stormwater assessment. Whether this exemption pertains to utility charges too, is currently a subject of litigation before the State Supreme Court.

9.1.10 Credit and Adjustment Policies

A good rate structure provides for credits to be awarded to parcels with privately maintained stormwater facilities that perform as designed and adjustments to be assigned where site specific attributes require modification to the standard billing algorithm to assure engineering equity.

9.1.10.1 Credit Policies

Credits are reductions in the bill that are granted to parcels that provide on-site, man-made stormwater management facilities. Such credits should be given only to such facilities that are *privately* maintained and which perform at the original design level. This argument is based on the fact that the City will incur the full cost of maintenance of those facilities built by the developer but subsequently transferred to the City, just as if it were a publicly built facility.

A credit process must be based on sound engineering principles, and codified, to support its consistent application across time and likely changes in the personnel who will be relying on it. The City currently includes a credit for commercial properties of 0.5. ***No history for the development or substantiation of the credit value employed (0.5) has been found.*** In the absence of an "engineered" rationale for the credit adjustment currently offered, it is recommended that the City adopt a mitigation credit policy that would be based on the estimated reduction in stormwater runoff impacts to the City's system (during a specified rain event) as a result of mitigation facilities that are privately maintained on the parcel.

9.1.10.2 The Adjustment Factor

The Adjustment Factor is a simple multiplicative factor that allows a jurisdiction to deal directly with those parcels that have a unique stormwater site attribute or set of attributes that cause impervious area to not fairly measure the relative runoff generated by that parcel. It is intended as an "escape valve" so that adjustments can be made on a case by case basis as necessitated by facts of the situation, rather than forcing the parcel into an estimated load which is simply inaccurate and, consequently, inequitable. The intent is to pre-empt both legal and political challenges to the rate structure.

This factor should be applied on an exception basis only; it is intended for use where failure to apply the adjustment leads to obvious, material inequity in the determination of a bill for a given parcel. The adjustment factor is applied in cases where topography (substantial portions of large, developed parcels do not drain to the City's facilities) or physical connection to the collection system (building surrounded by large amounts of pervious area or pervious parking lots) causes severe miscalculation of the impact of the parcel on the City's facilities.

9.1.11 Services vs. Infrastructure Cost Recovery

The City is currently exploring the feasibility of employing user-charges to fund infrastructure investments being considered in the City. Careful consideration should be given to the creation of capital improvement "benefit areas" for funding capital improvements programs. A capital improvement benefit area is defined as that geographic area resulting from an aggregation of those parcels that are directly benefited by a given stormwater capital project or set of projects. While *operation and maintenance costs* may be appropriately recaptured on a service-area-wide basis, some communities may choose to not recapture *capital costs* on a service-area-wide basis because specific improvements may not provide a benefit to the entire service area.

Substantial untested legal issues revolve around the question of whether capital charges *must* follow basin lines. One argument holds that, since by definition, stormwater cannot cross a basin boundary, capital improvements installed in one basin cannot directly benefit parcels outside that basin. On the other hand, one could easily make the argument that sewer utilities typically do not follow gravity based topographical delineation in their capital charges. To be legally conservative until this issue is more defined by the courts, a jurisdiction might plan to recover the cost of stormwater related capital improvements within the hydrologic area in which they are installed. For example, only those parcels within the basin pay for the facilities installed within that basin unless the entire community *clearly* shares a common, explicitly defined level of service. Most large jurisdictions or communities that are not largely built out will struggle to meet this test, and should consider the basin approach.

Rates may be set at the same dollar value across all benefit areas. Alternatively, they may vary from benefit area to benefit area based upon the number of billing units, the capital costs and the funding mechanics (bonds, short term borrowing or "pay as you go") utilized in each benefit area. However, how much "project" each rate will "buy" in each benefit area will vary according to the number of the billing units found within the benefit area.

If the proposed Master Plan for the City of Cocoa Beach provides for a common level of service framework for the projects for the City, we feel the City is reasonable in charging one rate throughout the City for all targeted capital projects. Should the City elect to apply more than one level of service where that level varies by basin, we recommend the systematic allocation of project costs to the parcels located within, and benefiting from, capital projects within each basin.

9.1.12 Collection Options

Three basic collection mechanics are available to municipalities in Florida: 1) as a user fee piggybacked on existing water and sewer bills (or other utility bills), 2) as a user fee collected on the annual property tax bill, and 3) as a separate utility bill sent by the City to the owner or the resident.

9.1.12.1 "Piggybacked" on the Water/Sewer Bill

User fees piggybacked on a water/sewer bill are usually targeted to the *resident*, unless specific adjustments to the billing file are made to bill the owner. This is the current approach used in Cocoa Beach. In contrast, stormwater charges collected on the as an assessment on the property tax bill are billed to the property owner of record. In either approach, much of the data available on which to build a billing system is parcel oriented. Fee based systems, such as the City's, are mechanically required to cross-link parcel level data to billing accounts to take full advantage of parcel based information sources. In addition, apportioning billing units derived at the parcel level to multiple occupants residing on the parcel, especially where master meters are employed (commercial, industrial and office accounts), present constant billing file maintenance challenges.

Collection enforcement of piggybacked fees is typically accomplished through 1) turning off water, 2) obtaining court orders (small claims court, where applicable) directing payment, and 3) execution of liens, where allowed.

9.1.12.2 Special Assessment

Special assessments are charges imposed on property for special benefit provided to the property. As funding devices, they have been around for several decades. This extensive history means that case law targeting assessments is well developed. The courts have identified two tests for establishing a valid assessment - the service or improvement funded by the assessment must provide "special benefit" to property and the assessment must be "fair and reasonably apportioned" to each benefited property. These tests must be embodied in the rate structure itself so fundamentally that the calculation of the assessment for any given property incorporates these foundation concepts into each bill rendered.

If imposed in accordance with Florida's Uniform Collection Method Act, assessments can be listed on the annual property tax bill mailed by the Tax Collector and are collected at the time property taxes are paid. All collection mechanics available to the Tax Collector to collect property taxes are also available to collect assessments.

Assessment law requires that each property owner must be notified of a public hearing held by the City to consider adoption of the assessment. Under a Uniform Collection Method approach, adoption must occur no later than September 15th of each year.

Assessment mechanics are discussed in detail in Appendix 9A.

9.1.13 Summary on Rate Structure Design

In summary, good stormwater user-charge based rate structures are the product of a careful design process. These rate structures:

1. Are built around a carefully defined and conceptually sound rate model that clearly defines benefit provided by the utility to its customers and embodies a mechanic that provides for reasonable proportionality of that benefit (typically, a "base billing unit");
2. Contain a clearly described credit policy to award reductions in bill amounts to those parcels or accounts that have site-related attenuation facilities that are privately maintained at a defined performance level;
3. Contain a clearly described adjustment policy to assign adjustments to those billing accounts where, due to unusual site-related characteristics, impervious area (or some other relevant core billing parameter) simply does not fairly describe the relative burden placed on the City's stormwater management system by that parcel;
4. Provide for a systematic billing records review procedure that can be initiated by utility customers;
5. Address the distinction between capital charges and service charges;
6. Clearly define exemption classes, if any, consistent with relevant legal issues of consistency and uniform application of law;
7. Address how public infrastructure is to be incorporated into the rate structure;
8. Clearly define the geographic range of the service area according to benefit accorded to the rate payer;
9. Demonstrate reasoned findings relevant to the rate structure by the city council that are specific to the community through incorporation of evidentiary findings; and
10. Are implemented with an eye toward utilizing the most practical legally available collection mechanics.

9.2 HOME RULE AUTHORITY TO CREATE AND CHARGE A "USER FEE"

In 1986, the first Florida stormwater utility was created by the City of Tallahassee. Since that time, approximately 100 other local governments have created stormwater utilities and implemented stormwater user fees to pay for all, or a portion of their stormwater management costs. Each program is unique to its own community needs. In the City of Cocoa Beach, a stormwater ordinance was adopted in 1991 (imposed in 1992) pursuant to the home rule power of article VIII, Section 2(b). Florida Constitution, and Chapter 166, Florida Statues, and the powers granted in the charter of the City. Ordinance 28, Article III accomplishes the following:

- **Creates the City's stormwater drainage utility;**
- **Provides specific definitions;**
- **Provides for the duties and powers of the of the utility;**
- **Provides for impervious surface calculation and establishes the "Equivalent Residential Unit" ("ERU");**
- **Provides for an appeal process;**
- **Provides for the establishment of the utility fee;**

- **Provides exemptions for public rights-of-way and vacant unimproved land;**
- **Provides for the establishment of a stormwater management enterprise fund; and**
- **Provides the mechanism for the collection of stormwater drainage utility fees.**

Selected portions of Chapter 28, ARTICLE III. STORMWATER DRAINAGE UTILITY is included below for reference purposes and are shown in Arial Narrow typeface. Following each selection and comments are the associated recommendations of the Consultant Team.

Chapter 28, ARTICLE III. STORMWATER DRAINAGE UTILITY

Sec. 28-20 Creation of stormwater drainage utility.

Pursuant to the home rule power of Article VIII, Section 2(b), Florida Constitution, and Chapter 166, Florida Statues, and the powers granted in the Charter of the city, the commission of the city does hereby establish a stormwater drainage utility and declare its intention to acquire, own, construct, equip, operate and maintain open drainage ways, underground storm drains, equipment and appurtenances necessary, useful or convenient for a complete storm drainage system; and also including maintenance, extension and reconstruction of the present storm drainage system of the city; to minimize by suitable means the system's contribution of flooding; and to seek the cooperation of Brevard County and other municipalities in minimizing the contribution of all systems and other sources of accelerated runoff of such flooding.

Comments: The Florida Legislature has mandated that local governments in the State of Florida, including the City of Cocoa Beach, have the responsibility for developing mutually compatible stormwater management programs consistent with the rules and regulations of the Florida Department of Environmental Protection, the water management districts and stormwater management programs established and maintained by other local governments. In a definitive ruling, the Supreme Court upheld the validity of the user-charge levied by Sarasota County, in large part, because the enabling legislation referred to the various stormwater related mandates imposed by the State. The Court was reluctant to impose its judgment into the mechanics of the use-charge because the public purpose and policy (from the State level through local County initiatives) were clearly recorded in the findings of purpose and benefit articulated in the County's ordinance.

Recommendation No. 1

The Stormwater Management Program Ordinance findings should consider referencing state and federal policies mandating stormwater management programs by local governments.

Sec. 28-21 Definitions.

Beneficiaries of drainage service shall include all developed real properties within the city that benefit by the provision of maintenance operation and improvement of the stormwater control system. Such benefits may include, but are not limited to, the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater, the reduction of hazard to property and life resulting from stormwater runoff, improvement in general health and welfare through reduction of undesirable stormwater conditions and

improvement to the water quality in the storm and surface water system and its receiving waters.

Comments: Since it is funded by a user-charge, it is necessary that the Stormwater Management Program provide a particular, relatively proportional benefit to each billed customer, pursuant to 197.3632 F.S.:

- The portion of the stormwater management program that is recovered by the fee must possess a logical relationship to the use and enjoyment of the developed property by managing stormwater leaving the property; and
- The special benefit received by real property is deemed to be the collection, conveyance and treatment of the stormwater runoff related to the impervious surfaces on the property

Benefit to property should be more specific to the property than such general benefit as the "reduction of hazard to life resulting from stormwater runoff" and the "improvement in general health and welfare through reduction of undesirable stormwater conditions". Specific benefit to property results from the "management and/or treatment" by the City Stormwater Management Program of stormwater runoff that is contributed to the City's stormwater system from properties with the City. This requirement is particularly relevant if the City elects to move from a fee basis to an assessment.

Recommendation No. 2

Reference more directly specific benefit to real property in the Stormwater Management Program Ordinance.

Commercial unit means any building or facility used other than as a dwelling unit or for industrial purposes and which has not been converted to equivalent dwelling units. It includes churches, schools and public facilities.

Recommendation No. 3

The term "dwelling unit" should be limited to single family detached dwelling units (see Recommendation No. 4). Should the city elect to bill customers as a special assessment, additional rate classes may need to be created in the Stormwater Rate Resolution. Typically these include: Single Family Residential, Multi-Family, Residential Condominium, Governmental (non-schools), Public Schools and General. General parcels would include, but not be limited to commercial establishments (including hotels), industrial properties, private schools, churches and other non-profit organizations.

Equivalent residential unit (ERU). The average impervious area in square feet of a residential unit within the city. The value of one ERU is two thousand nine hundred (2,900) square feet.

Comments: An Equivalent Residential Unit is defined in the ordinance as consisting of 2,900 square feet (presumably of impervious area), based on the average impervious area in square feet of a residential unit within the City at the time the initial ordinance was adopted. The manner of achieving the original impervious area values for each residential property is undocumented. It is assumed that the average was achieved by

calculating the average of a sample of properties in the *single-family* residential rate class. It is also unknown how the sample was developed.

We could find no evidence that the base billing unit value has been validated since inception of the utility. While eight years is not extreme in terms of validating the base billing value, in the absence of documentation of the original procedures, the City should strongly consider executing a controlled and documented study to re-establish the base billing value.

Such a study should not prove expensive or time consuming. It is possible to derive the impervious area related to building footprint and additional building features of each single-family residential property using Brevard County Property Appraisal data. Impervious area related to additional property features, such as detached garages, patios, sheds, etc. are frequently maintained in the property appraisal files. Driveway information, such as type (concrete, asphalt or gravel) and size is normally not maintained by the Property Appraiser and must be developed from other sources or by sampling-based field measurement.

Since mathematically the mean ("average") is skewed by abnormally high or low values, we feel the median is a more appropriate measure of "central tendency".

Recommendation No. 4

4.a It is recommended that "residential" for purposes of establishing a base billing unit be limited to and defined as single-family detached residences.

4.b The median of the sample or universe of single family parcels should be used to determine the base billing value, rather than the mean (average).

4.c The ERU value of 2,900 square feet should be updated or validated. Where the impervious area of residential driveways is not available, a statistically reliable sample should be obtained to impute driveway size to single family residential parcels.

4.d The City should consider removing reference to a specific base billing rate from the Stormwater Management Program Ordinance and adopt the specific rate in a separate, annual rate resolution.

4.e The process of determining the base billing value (currently 2,900 square feet of impervious area) should be carefully documented and the analysis should be referenced by the rate resolution.

Sec. 28-23. Impervious surface calculation.

(a) All developed property, except single-family residential properties, in the city shall have their square footage impervious area calculated in order to establish their ERU value. If the site has on-site retention consistent with city codes then such site shall have a credit of five-tenth (0.5) times its original ERU value.

(b) The city commission has determined that property not used for single-family dwellings is furnished service in proportion the amount of the property's impervious surface and that for each two thousand, nine hundred (2,900) square foot of impervious surface the property is furnished service equivalent to that furnished a singe-family dwelling. A single-family dwelling has an ERU of one. The minimum service charge for any developed property shall be that established for one (1) ERU.

Comments: As noted in the previous section, the ability to offer site-specific stormwater fee adjustments is an integral part of a good rate structure. However, the adopted credit of 0.5 times the original ERU value is not documented with respect to how the credit value was developed. We see no logical reason why single-family residential neighborhoods with appropriate privately maintained stormwater facilities should not be accorded a mitigation credit on the same basis as commercial properties.

The mitigation credit should be limited to those owners who have installed privately maintained stormwater facilities where those facilities are performing as originally designed and permitted. To assure system performance, the credit should be valid for a set period of time (for example, two years), renewable upon inspection or proof of performance. Proof of compliance with the credit requirements (that is, that the facilities operate as designed) should fall on the owner or homeowner's association through submission of a sealed affidavit from a professional engineer or, where relevant, a current SFWMD surface water permit. The billing system can be designed to trigger notices of impending expiration of the credit and to drop the credit where re-certification has not occurred.

The City's structure should incorporate a site adjustment factor and policy that is separate from the credit for on-site facilities. As discussed in Section 2, this factor is used to address a site-specific issue that, absent consideration of which, renders the bill for the parcel as inequitable.

Recommendation No. 5

5a. The City's mitigation credit should be revisited to validate the magnitude of the credit, to document how the value was determined, to provide a finite period of time for which the credit is effective and to document procedures for consistent application of the credit by City staff.

5b. It is strongly recommended that the rate structure include a site adjustment factor and policy. The policy should be based on sound engineering science; these findings should be made a part of the Stormwater Rate Resolution.

Sec. 28-24. Appeal of impervious surface calculation.

Any person disagreeing with the calculation of impervious surface as determined by the utility may appeal such determination to the city engineer. Any appeal must be filed in writing and shall include a survey prepared by a registered surveyor showing total property area and impervious surface area. Based upon the information provided by the utility and appealing party, the engineer shall make a final calculation of impervious surface...

Comments: The City should consider expanding the range of appeal to include 1) disagreement with the assignment of the proposed mitigation credit and 2) to address site adjustments consistent with the site adjustment policy.

Sec. 28-25. Utility fee established.

(a) Subject to the provisions of this article, there is hereby imposed on each and every developed lot or parcel of land within the city and the owners thereof a stormwater drainage utility fee. This fee is deemed reasonable and is necessary to pay for the operation, maintenance, administration and capital improvements of the such future stormwater drainage facilities as may be established within the city and to pay for the design, right-of-way acquisition and construction or reconstruction of stormwater

drainage facilities to the extent that such costs have been determined to be the responsibility of developed properties. All of the proceeds of this fee are deemed to be in payment for use of the city stormwater drainage system.

(b) Monthly service charges are based on the square footage of impervious area, such that for each two thousand, nine hundred (2,900) square feet of area or increments there of the property shall be charged an additional ERU charge.

(c) The monthly ERU fee is hereby established at two dollars and seventy-five cents ($2.75).

(d) The monthly fee for multifamily residential properties shall be five-tenths (0.5) of the ERU rate times the number of individual dwellings existing on the property.

(e) The fees imposed for commercial property shall be the ERU fee multiplied by the numerical factor obtained by dividing the total impervious area in square feet by two thousand nine hundred (2,900) feet.

(f) The minimum fee for any commercial property shall be no less than for one ERU.

(g) A stormwater deposit will apply to all new accounts and existing accounts that [are] over sixty (60) days delinquent.

(1) Residential...$6.00
(2) Multifamily unit – Number of ERU's x rate x 2
(3) Commercial – Number of ERU's x rate x 2

Comments: (a-g) Moving specific rates and methodological mechanics from the enabling ordinance into a Stormwater Utility Rate Resolution allows elected officials to approve future rate or methodological changes by resolution rather than modification of the ordinance.

(a) Reference is made in the ordinance to charging "all developed lots or parcels of land within the city and the owners thereof a stormwater drainage fee." However, in most cases, since the fee is piggybacked on the utility bill, the tenant receives the bill.

(g) The current deposit policy would not be required should the city elect to use a special assessment program.

Recommendation No. 6

It is recommended that the apportionment methodology be detailed in an annual rate resolution, rather than in the Stormwater Ordinance.

Sec. 28-27. Stormwater management fund.

No Comments.

Sec. 28-28. Stormwater drainage utility fee collection.

The stormwater drainage utility fee shall be billed and collected with the monthly utility bill for those lots or parcels of land utilizing city utilities and billed and collected separately as stormwater drainage utility fees for those lots or parcels of land and owners thereof not utilizing other city utilities. All such bills for stormwater drainage utility fees shall be rendered monthly by the finance department and shall be come due and payable in accordance with the rules and regulations of the finance department pertaining to the collection of the utility fees.

The stormwater drainage utility fee is part of a consolidated statement for utility customers that are generally paid by a single payment. In the event that a partial payment is received, the payment shall be applied pro-rata to each account billed on the consolidated

statement in the proportion that an individual account bears to the total consolidated statement of all current charges for all accounts.

(a) Any charge due hereunder which shall not be paid when due may be recovered in an action at lay by the city. In addition to any other remedies or penalties provided by this article or any other ordinance of the city, failure of any user of city utilities within the city to pay such charges promptly when due shall subject such user to discontinuance of utility services and the city manager of the city is hereby empowered and directed to enforce this provision as to any and all reasonable times, have access to any premises service by the city for inspection, repair or the enforcement of the provisions of this article.

(b) All stormwater drainage utility fees assessed pursuant to this article shall be a lien upon the property to which such fee is associated from the date such fee becomes due until such fee is paid. The owner of every building, premise, lot or house shall be obligated to pay the fee for all service provided for these premises, which obligation may be enforced by the city by action at law or suit to enforce the lien in the same manner as the foreclosure of mortgages. In the event of such action, the city shall be entitled to recover all court costs and reasonable attorney fees for such collection. In the case that a tenant in possession of any premises or buildings shall pay such charges, it shall relieve the land owner from such obligation and lien; but the city shall not be required to look to any person whatsoever other than the owner for the payment of such charges. No changes of ownership or occupancy shall affect the application of this article, and the failure of any owner to learn that he purchased property against which a lien for stormwater utility fees exists shall in no way affect his responsibility for such payment.

Comments: These articles are appropriate for use with the monthly utility bill mechanism. They would not be required with the use of a non ad Valorem assessment.

Existing billing policy does not consistently bill parcel owners when the stormwater drainage fee is not linked to an active utility bill. An example would include developed parcels that are not occupied (with an inactive utility account). These parcels are still generating runoff that is being managed by the City. The City's billing system has to link inactive accounts to a current property owner, then prepare and send a bill to that address rather than the account address. This requires substantial system maintenance, especially in a community like Cocoa Beach with its large seasonal population.

In addition, billing system maintenance personnel must struggle with the reapportionment of bills among commercial sites with multiple water meters. As tenants move in and out and take down differing amounts of space, the stormwater bill should be modified to reflect the changes. To do so accurately is very time consuming. An alternative is to bill the owner on all multiple-meter accounts.

We recommend the City move the billing and collections of the stormwater bill from a fee on the utility bill to a special assessment basis for the following reasons:

- Stormwater is essentially a parcel based rather than occupant based phenomenon;
- Billing the parcel owner as an assessment is simple and direct under the Uniform Collection Method Act;

- Collections are handled by highly developed structure (property tax collection) that has been around for decades with clearly established case law;
- Database maintenance should be substantially reduced; and
- Revenues should be meaningfully increased since each developed parcel pays whether it has an occupant or not.

Recommendation No. 7

The city should consider collecting the stormwater user-charge as a special assessment on the property tax bill rather than the current practice of piggybacking on the City's utility bill. Should the City elect to leave the charge on the utility bill, the City should stipulate in the Stormwater management Program Ordinance that proceeds from utility bill payment are applied to water service last. This preserves a direct link between partial payment of the whole utility bill and shutting off service at the election of the City (consistent with policy) for failure to pay the bill in full.

Special assessments are discussed in more detail in Appendix A.

9.3 COMPARING THE CITY'S STORMWATER UTILITY PROGRAM TO OTHER FLORIDA STORMWATER UTILITIES

How does Cocoa Beach compare to other Florida cities? Like any utility, a stormwater utility has two fundamental structural characteristics:

- **It is a defined *organizational entity* charged with accountability for the execution of a defined stormwater management program and,**
- **It is a stand-alone, self-contained *accounting entity* with a defined rate structure and budget appropriations.**
- **This section contrasts Cocoa Beach's utility with the general pattern of utilities across the State.**

9.3.1 Organizational Entity

As an organizational entity, a stormwater utility has a defined mission or purpose - to provide a defined level of stormwater management service to the community. It is provided financial resources and charged with the management of human resources and the support equipment necessary for those personnel to accomplish the mission effectively and efficiently.

As organizational entities, stormwater utilities can pursue one of two general courses in providing services; it can contract with other units within the jurisdiction's organizational structure (such as Public Works' road maintenance or other similarly equipped personnel) to provide services, or it can acquire its own staff and provide services directly. *In either event, the fundamental objective of the organizational aspect of a utility is the clear assignment of accountability.* All final responsibility for performance in achieving the stormwater program objectives lies with the utility structure.

Utilities can provide a wide range of services that are funded from the user charge. These include:

- **Facility/field operations and maintenance (including repair, restoration and renovation)**
- **System analysis and asset management,**
- **Planning and engineering design**
- **Monitoring, permitting and enforcement**
- **Capital improvements project management**
- **Public information and education**
- **Management and administration, including system inventory and valuation**
- **Billing, collections and customer relations**

The City's utility operates as a separate organizational entity under the City's Water Reclamation Department. A separate report, Maintenance Program Review, reviews the current structure, staffing and duties of the unit in more detail and examines the Stormwater Master Plan on the utility's operational capabilities.

9.3.2 Accounting Entity

The second fundamental characteristic of a utility is its stand-alone accounting entity status. *Consistent with Generally Accepted Accounting Practices (GAAP), the stormwater utility must be structured as either a special revenue fund or as an enterprise fund.* Such a fund designation requires that revenues generated by or transferred to the utility must be spent solely for legitimate stormwater management functions.

Special revenue fund designation provides for the isolation of revenues and expenditures appropriate to the utility concept. Its accounting set up and reporting requirements are simple, hence its appeal as a funding mechanism.

Enterprise fund designation brings additional obligations of asset valuation and the use of full accrual techniques not required of a special revenue fund (introduction of the new Governmental Accounting Standards Board Statement 34 reporting rules will substantially alter this precept as it is implemented over the next three years). However, such designation also clearly establishes the organizational integrity of the utility.

The City's utility operates as an enterprise fund. Financial aspects of the operation are reviewed in sub-section 1.3.4 of this report; funding ramifications are reviewed in sub-section 1.4.

9.3.3 Stormwater Utility Organization in Florida

The Florida Association of Stormwater Utilities (renamed Florida Stormwater Association in June 2001 "FSA") has been tracking Florida stormwater utility rates since 1994. Every two years, a survey is conducted to provide information about the unique and shared characteristics of the more than 90 Florida utility programs that have been created. The survey has been used to compile data about rates and billing unit size by jurisdiction

within the State of Florida. The most recent survey, distributed in June of 2001, reflects the following pattern of utility organization for the 61 members that responded:

Separate department	**11% (7 jurisdictions)**
Combined with Public Works	**66% (40 jurisdictions)**
Combined with Wastewater Utility	**0% (no jurisdictions)**
Combined with other department	**23% (14 jurisdictions)**
Separate authority	**0% (no jurisdictions)**

The average population served by the utility was slightly over 104,000 compared to the city's estimated population of 13,000. The average number of residential "accounts" was reported to be 37,694, with 27,165 single-family residences and 9,328 multi-family units. The average number of non-residential accounts was reported to be 5,705.

The average rate, normalized per 1,000 square feet of billing area, was $1.57 per month ($18.84 per year) in 1999, up from $1.53 in 1999. The Cocoa Beach billing unit is 2,900 square feet of impervious area and is currently billed at $2.75 per billing unit per month. Normalized per 1,000 square feet of billing area, this is equal to $0.95 per month ($11.40 per year) or 61% of the average billing rate charged by other Florida stormwater utility programs.

In 1999, the average number of full-time equivalent ("FTE") employees per responding utility was 20.7. Dividing the average population served by the average number of full-time employees yields a rough benchmark of one FTE stormwater employee funded by user-charges per 5,500 residents. The City's current stormwater utility includes four full time positions serving approximately 14,000 residents. It should be noted, however, that seasonal swings in residency place additional burden on staff during peak occupancy periods.

The 1999 FSA Survey reflects the following pattern of allocation of work effort among respondents:

- **65% of respondents spend at least 21% of budgeted revenues on operations and maintenance efforts. Only 17% spend five percent or less on such efforts.**
- **45% of responding jurisdictions spend more than five percent of their budgeted revenues on capital projects.**
- **Almost 70% of respondents spend more than five percent of their budgeted revenues on monitoring, permitting and enforcement, likely reflecting the targeting of stormwater utility revenues toward meeting NPDES requirements.**
- **Less than one percent devotes more than five percent of budgeted revenues to public information.**
- **Approximately two-thirds of respondents reported one or fewer FTEs associated with administration (including "management, billing, records, etc.").**
- **The majority of reporting jurisdictions monitor improvements in water quality and flood protection.**
- **One-half (39 of 61) local governments report that between 75% - 100% of their jurisdiction's stormwater facilities are mapped and inventoried.**

- **Stormwater fee revenue is considered to be sufficient by 69% of reporting programs to be adequate to fund administrative needs, while only 23% report that funds are sufficient to fund operations and maintenance and 16% report that funds are sufficient to fund capital needs.**

9.3.4 The City's Current Stormwater Utility Structure

The City of Cocoa Beach established a stormwater utility and a stormwater enterprise fund in 1991. The City employs an "impervious area"-billing billing model with credits awarded to commercial and multi-family parcels with privately maintained site-related facilities. The City uses the existing utility bill for stormwater bill delivery. The City generated approximately $288,000 from the utility charge in FY1999 and $260,080 in FY 2000.

9.3.4.1 Budget Distribution

The City's FY budget has historically indicated the distribution of stormwater funds as follows:

- **Operations and maintenance** **50%**
- **Capital projects** **13%**
- **Overhead pro rata (to General Fund)** **8%**
- **Internal Services – computer support** **5%**
- **Fleet management** **1%**
- **Other Services (as needed basis)** **23%**

9.3.4.2 Current Stormwater Program Staffing

The funding and responsibilities of each "stormwater program" staff position are designated as:

DIRECTOR OF WATER RECLAMATION SERVICES

- Provides general management services

PROGRAM COORDINATOR

- 100% of salary budgeted in utility fund
- Provides budget, contract management, public outreach, site plan review, database management, capital reporting and inter-governmental coordination services

SUPERVISOR (1) $19/hour

- 100% of salary budgeted in utility fund
- Provides supervision of field operations, database maintenance and work orders, map maintenance, scheduling, purchasing and cost tracking services

MAINTENANCE WORKERS (3) total for crew: $47/hour

- 100% of salary budgeted in utility fund
- Provide storm facility maintenance (response, preventative and rehabilitation), storm line vacuuming, slip-lining, retention construction and dredging

SUBCONTRACT SERVICES

- Street sweeping and master planning services are contracted to the private sector.

Applying the staffing benchmark of 1 FTE per 5,500 residents to Cocoa Beach's estimated population of 18,000 yields a projected "benchmark" staffing of 3.27. However, applying the benchmark against the seasonal population of 40,000 yields a substantially higher benchmark staffing of 7.27. Cocoa Beach's current staffing of four FTE positions falls between the two benchmarks. Additional information on operations and maintenance staffing is in the Maintenance Program Review Supplement.

9.3.4.3 Proposed Stormwater Program Staffing Additions

The following additions to stormwater program staffing are recommended as a result of the regulatory and maintenance review provided by this study.

STORMWATER COMPLIANCE OFFICER (1 Part-time position @ $15,000 annual salary and 1 vehicle purchase @ $25,000, with insurance, fuel and maintenance @ $1,800/annually)

- 100% of salary to be budgeted in utility fund
- Inspect new and existing properties for compliance with City stormwater management rules
- Determine if illegal discharges are occurring from property
- Require installation and set test frequency of sampling/metering devices
- Provide documentation of non-compliance with City stormwater management rules

This individual would have the responsibility for the inspection of all stormwater-related facilities, would work with engineering staff to identify the placement and functioning of BMPs, would inspect all active construction sites to monitor the placement of silt fences and other pollution prevention systems required during development and would be authorized to enforce all stormwater management rules and regulations.

DREDGING CREW (3 new full time positions - $47/hour total)

- 100% of salary to be budgeted in utility fund until an MSBU program can be established
- Provide all maintenance activities related to the removal of muck by dredging, the replacement of upstream storm lines, swale reconstruction, seawall repair and the proper disposal of deleterious material removal from canals.

The maintenance review recommended the addition of an full-time dredging program to adequately address the maintenance of the City's 37 canals meeting the guidelines of the City's five-year FDEP/ACOE permit and would provide for the reclamation of the original canal cross sections through the removal of muck and other sediments. The Water Reclamation Department will fabricate a dredge for use within the canals. Other costs, such as fuel and costs for transportation and subsequent disposal of much and other materials from the canals are not included in this study.

9.3.5 Stormwater User-charges Adopted in Other Jurisdictions

It is estimated that some 400 to 450 user-charge based stormwater utilities have been adopted across the county, with Florida having the greatest number of utilities in the country. Approximately 100 counties (and/or municipalities) have adopted some form of user-charge.

Recent research compiled by the Center for Urban Policy and the Environment indicates that annual charges for residential properties range from $15 to $130 per year. The research also indicates that, relative to property taxes, residential users pay less under a user-charge approach, while non-single-family users typically pay more. This result is not unexpected since user-charges are typically based on the amount of impervious surface (hard surfaces through which water has difficulty percolating). Single-family residences typically have far less impervious area per parcel than their non-single-family counterparts.

The most recent FSA survey, compiled in 2001, indicates that the average utility rate in Florida was $1.57 per month for every 1,000 sq. ft. of impervious area. For comparison, a rate of $1.57/1,000 sq. ft. equates to approximately $4.55 per month or $56.40 per year for the typical single-family household of one ERU (2,900 square feet of impervious area) in the City of Cocoa Beach. According to the study, rates in Florida range from $6.00 per year to $99.96 per year and have an average billing unit of 2,798 square foot. *Based on response to the survey, the City's current rate of $2.75/ERU/month or $33.00 per year puts the rate in the lower third of all Florida stormwater utility programs.*

A listing of the rates adopted by responding jurisdictions is presented in Appendix B.

9.4 ADEQUACY OF RATES

Based on the Master Plan's review of the City's ongoing stormwater management needs, the identification of key maintenance areas that need enhancement and "new" funding that will be required to pay for proposed capital projects, it has been determined that current stormwater rates are insufficient to meet the needs of the additional programs. Additional funding is needed in the following areas: 1) Additional staff and activities recommended in the maintenance review, 2) Additional staff recommended in the regulatory review and 3) construction of capital improvements. It is important to note that the operations environment is being driven by regulatory mandates of the federal Clean Water Act, an aging infrastructure and increasing competition for water resources throughout the region. The Clean Water Act has greatly increased the capital needs of most communities. *Future budgets must include funding for added operations and maintenance tasks that are created as a result of new capital projects.*

9.4.1 Capital requirements

A list of 37 capital improvements characterized as "Best Management Practice" initiatives (BMPs) was developed for analysis. The total estimated cost to construct all 37 capital improvement projects is $4,214,651 in today's dollars. The projects considered include the construction of sediment traps, easement swales and wet detention ponds that would offer significant sediment removal, or other quality benefits in various drainage basins within the City. The mitigation benefit, location, cost, and other factors were all used to determine a proposed project list for a ten-year period with year 1 shown as Fiscal Year 2002. ***The projects chosen for construction during the first ten-year period are estimated at $1,352,214 in today's dollars.*** The proposed staging of projects was influenced by the City's goal of making improvements throughout the community, as all fee-paying customers have the right to expect capital projects to improve the stormwater characteristics in the basin in which they reside in a reasonable period of time (generally thought to be within five to seven years).

The advantages and disadvantages of constructing mitigation ponds, rather than "end-of-pipe" sediment treatments were carefully considered in each basin. It was noted that sediment traps would provide a measurable amount of sediment, nitrogen and phosphorus removal, however, no reduction of stormwater "quantity" or runoff would be provided and no reuse would be available. Sediment traps, however, offer good pollutant removal efficiency at a moderate capital cost and were chosen where property is unavailable for the construction of a mitigation pond. A priority list of projects, evaluated for unit cost effectiveness and other criteria, resulted from this analysis. Table 1 indicates the projected pollution reduction that is expected to result from the construction of selected capital projects. It is anticipated that these projects would be undertaken during a ten-year period, with the first annual period being fiscal year 2002.

TABLE 9.1
Proposed 10-Year Capital Projects Plan
Projecting the Estimated Pollutant Load Reduction of "Best Management Practices"

YEAR/ Project #	BASIN SERVED	BMP LOCATION / DESCRIPTION	AREA SERVED (acres)	TSS REMOVED BY BMP (lbs/yr)	TN REMOVED BY BMP (lbs/yr)	TP REMOVED BY BMP (lbs/yr)	FRESH WATER RETAINED BY BMP (Mgal/yr)
2002/1	D	STORMWATER POND - SEMINOLE STORMWATER POND PARK	83.0	4153	264.1	41.64	0.48
2003/2	E	STORMWATER POND - COCOA ISLES STORMWATER POND PARK	90.2	2139	191.2	39.37	1.89
2004/3	A	STORMWATER POND - NORTHEND STORMWATER POND PARK	59.4	1362	68.9	16.38	0.98
2005/4	G	STORMWATER POND - DOWNTOWN STORMWATER POND PARK	18.7	193	26.3	7.16	0.12
2006/5	A,B	ENHANCED SWALE / EXFILTRATION PROJECTS - OCEAN BEACH BOULEVARD BETWEEN CALIFORNIA & VOLUSIA	81.6	4712	128.1	19.17	10.25
2007/6	C	ENHANCED SWALE / EXFILTRATION PROJECTS - OCEAN BEACH BOULEVARD SR 520 TO FLAGLER	35.1	3059	76.7	17.48	8.97
2008/7	B	SEDIMENT / OIL & GREASE TRAP - CARMINE DR. / BARRELLO LANE / BANANA RIVER BLVD.	61.5	356	34.2	0.81	0
2008/8	G	SEDIMENT / OIL & GREASE TRAP - SOUTH 2ND STREET	85.6	1241	41.8	1.3	0
2009/9	H	SEDIMENT / OIL & GREASE TRAP - SOUTH 8TH STREET	49.8	600	52.4	1.47	0
2010/10	F	SEDIMENT / OIL & GREASE TRAP - NORTHSHORE	49.5	1691	63.2	1.68	0
2011/11	C	SEDIMENT / OIL & GREASE TRAP - ST. LUCIE LANE / BANANA RIVER BLVD.	72.7	1032	66.1	1.96	0

Estimated capital and land costs, annual operations and maintenance costs, the areas served and the projected environmental impacts, such as reduction of total suspended solids (TSS) were identified for each BMP shown in Table 9.1. Table 9.2 features the estimated capital costs related to the construction and annual maintenance related to each of the projects. The projected budget is illustrative in nature, and is furnished for planning purposes only. Revisions may be required, as future drainage issues, changing political interests and new funding opportunities present themselves.

TABLE 9.2
Illustration of
Projected Ten-Year Capital Project Needs

Year/Project No.	Basin	BMP LOCATION / DESCRIPTION	Total Construction Cost ($)	Total Capital Cost ($)	Estimated Land Cost ($)	Total Estimated Implementation (Construction + Capital + Land) Cost	Estimated Annual O&M ($/year)*
2002 No. 1	D	STORMWATER POND - SEMINOLE STORMWATER POND PARK	$ 56,000	$ 25,200	$ 100,000	**$ 181,200**	**$ 10,500**
2003 No. 2	E	STORMWATER POND - COCOA ISLES STORMWATER POND PARK/EASEMENT SWALE ON VACANT PROPERTY EAST OF SAMAR	$ 95,000	$ 37,750	$ 100,000	**$ 232,750**	**$ 11,000**
2004 No. 3	A	STORMWATER POND - NORTHEND STORMWATER POND PARK	$ 84,000	$ 37,800	$ 1,500	**$ 123,300**	**$ 10,500**
2005 No.4	G	STORMWATER POND - DOWNTOWN STORMWATER POND PARK	$ 42,000	$ 18,900	$ -	**$ 60,900**	**$ 5,250**
2006 No. 5	A,B	ENHANCED SWALE / EXFILTRATION PROJECTS - OCEAN BEACH BOULEVARD BETWEEN CALIFORNIA & VOLUSIA	$ 166,250	$ 47,939	$ -	**$ 214,189**	**$ 7,150**
2007 No. 6	C	ENHANCED SWALE / EXFILTRATION PROJECTS - OCEAN BEACH BOULEVARD SR 520 TO FLAGLER	$ 212,500	$ 61,625	$ -	**$ 274,125**	**$ 9,350**
2008 No. 7	B	SEDIMENT / OIL & GREASE TRAP - CARMINE DR. / BARRELLO LANE / BANANA RIVER BLVD.	$ 40,000	$ 14,000	$ -	**$ 54,000**	**$ 500**
2008 No. 8	G	SEDIMENT / OIL & GREASE TRAP - SOUTH 2ND STREET	$ 40,000	$ 14,000	$ -	**$ 54,000**	**$ 500**
2009 No. 9	H	SEDIMENT / OIL & GREASE TRAP - SOUTH 8TH STREET	$ 40,000	$ 14,000	$ -	**$ 54,000**	**$ 500**
2010 No. 10	F	SEDIMENT / OIL & GREASE TRAP - NORTHSHORE	$ 40,000	$ 14,000	$ -	**$ 54,000**	**$ 500**
2011 No. 11	C	SEDIMENT / OIL & GREASE TRAP - ST. LUCIE LANE / BANANA RIVER BLVD.	$ 60,000	$ 21,000	$ -	**$ 81,000**	**$ 500**
							3 months (.25 annual)
		Total for all proposed BMP Projects	***$ 875,750***	***$ 306,214***	***$ 201,500***	***$ 1,383,464***	***$ 13,938***

9.4.3 Examples of BMP Projects

Project # 6 Ocean Beach Median Swales/Exfiltration

Enhancement of the existing boulevard medians along Ocean Beach between 520 and Flagler offers a blend of landscaping enhancement, retention, and exfiltration features. This project is expected to remove pollutants before their outfall into the Banana River while reducing the quantity of freshwater flowing to the lagoon. The location is in a high traffic area surrounded by hotels and retail businesses where the design of "safety island" medians would serve tourist and other pedestrian beach traffic. In addition, landscaped swales are proposed to provide a visually appealing alternative to other BMPs that were considered. The swales address TSS removal (an estimated removal of 3,059 lbs. per year), a small reduction in TN and TP while also furnishing some runoff volume reduction through infiltration. In the future, the swales can be easily modified (structurally) to provide some retention characteristics or even approach a bio-retention type of facility. Swales are generally viewed as inexpensive on a per-foot basis and may not require intensive maintenance, depending on the level of landscaping introduced. These improvements can be designed to meet the community's beautification needs by adding native beach landscaping to the swales. These upstream improvements will reduce the City's BMP needs adjacent to St. Lucie Lane along the Banana River.

Initial costs, in today's dollars, are estimated at $212,500 in construction costs, capital costs are estimated to be $61,625 and annual costs for maintenance are estimated to be $9,350. The first year maintenance is estimated to be $2,337. No land costs are anticipated.

Project #8 South 2nd Street Sediment Trap

A sediment trap was chosen at this location because the purchase of property that would be required for the construction of another type of BMP, such as a pond, is not an option. A sediment trap at this location would feature an unobtrusive underground installation with a small "footprint" in comparison with other BMPs that were considered. Its installation will require right of way access and utility clearance planning. The sediment trap would be placed for optimum effect at the end of the main stormwater trunk line. This would provide storm runoff treatment prior to discharge into the Brevard/Sunset Canal, which has been identified as having the worst water quality characteristics in the City. Floating debris and other suspended solids entering the trunk line from the 85.6-acre storm basin south of downtown would be removed at this location in addition to some removal of total nitrogen (TN) and total phosphorous (TP). This canal is adjacent to City Hall and highly visible to the community. It was recently dredged of a considerable amount of urban muck sediments. Other improvements would be needed within this large basin for continued canal improvement. They would include State Road A1A easement swales, catch basin skimmer baskets and dry retention where available.

The initial cost, in today's dollars, to construct the South 2nd Street Sediment Trap are estimated to be $40,000 and capital costs are estimated to be $14,000. No land costs are anticipated. Annual estimated maintenance costs are estimated to be $500 and first year maintenance is estimated to be $125.

Project #10 Northshore Sediment Trap with Oil/Grease Skimmer

This construction of this proposed BMP includes a sediment trap that will remove sediment, large debris and floating particles from a 50-acre storm basin north of downtown. The storm runoff will be treated prior to discharge to the North Shore/Indian Creek Canal, which required dredging in 1996. The sediment trap will be located along North Shore Drive west of Oak Street. Other improvements will be needed within this basin, including State Road A1A easement swales, exfiltration and dry retention where available. Implementation costs are estimated to be the same as those for Project 6.

The initial costs, in today's dollars, for construction and other capital expenses associated with the Northshore Sediment Trap are estimated to be $54,000. No land costs are anticipated. Annual maintenance cost is estimated to be $500 and first year maintenance is estimated to be $125.

Project #11 S. Lucie Lane/Banana River Blvd./Sediment Trap

This project features the construction of a sediment trap to remove large debris and floating objects from a 65-acre storm basin in the northern side of Cocoa Beach. The storm runoff will be treated prior to discharge to the Jack/Kent Canal, a canal critically in need of dredging. The sediment trap will be located along North Banana River Drive at the Cape Canaveral City Limits. Other improvements will be needed within this basin, including the improvement of Ocean Beach median swale, State Road A1A easement swales, and dry retention ponds where available. The projected effect is the reduction of pollutants that discharge into the Banana River. A sediment trap was chosen in this location because the purchase of land that would be required for the construction of other BMPs, such as ponds, is not an option. Sediment traps have moderate capital costs and good pollutant removal efficiency. It will require regular maintenance with a total expected annual maintenance cost of $500. Similar to the sediment traps proposed in other years, this project is regarded as an unobtrusive underground installation, with a small "footprint" in comparison with other BMPs. The installation will require right of way access and utility clearance planning.

The initial cost to construct the Jack/Kent Sediment Trap is estimated to be $40,000 and capital cost is estimated to be $14,000. No land costs are anticipated.

Estimated Future Capital Budget

It is anticipated that capital projects would continue in future years as recommended in the Master Plan. If the majority of projects are completed within the next ten years, the capital expenditure would decrease in consecutive years as the operations and maintenance needs for completed capital projects continues to increase. Table 9.3 includes the Four-Year estimate of BMP-related expenses, including new and recurring maintenance costs following the construction of BMP projects.

Table 9.4 includes an example of a four-year proposed stormwater management program budget and, using averages for the first four year figures, indicates the average rate per month that would be necessary to recover the projected costs, based on a 3% increase of billing units over the next four years.

Table 9.3
Four-Year Estimated BMP-Related Expenses
(Capital plus new and recurring maintenance related to the BMPs in place)

Project	Program Component	Fiscal Year			
		2002	2003	2004	2005
1	Initial Cost	$181,200			
	Initial Maintenance	$ 2,625			
	Annual Maintenance		$ 10,500	$ 10,500	$ 10,500
2	Initial Costs		$ 201,500		
	Initial Maintenance		$ 2,625		
	Annual Maintenance			$ 10,500	$ 10,500
3	Initial Cost			$ 123,300	
	Initial Maintenance			$ 2,625	
	Annual Maintenance				$ 10,500
4	Initial Cost				$ 60,900
	Initial Maintenance				$ 1,312
	Annual Maintenance				
	With application of annual 3% inflation factor	$ 183,825	$ 214,625	$ 146,925	$ 93,713

Table 9.4
Four-Year Estimated Stormwater Management Budget

Estimated Budget Components	FY2002	FY2003	FY2004	FY2005	Averages for FY 2002-2005
Current Program LOS with 3% Inflation Factor	$260,000	$267,800	$275,834	$284,109	**$271,936**
Budget for Additional Personnel: *Includes a 3-person Full Time Dredging Crew And a 1 Part Time Compliance Officer in FY 2002 and 2003, changing to Full time in FY 2004, FY 2005, and so on.*	$112,766	$112,766	$127,766	$127,766	**$120,266**
Expenses Needed for New Personnel: Year 1 includes truck (or SUV) purchase, all years indicate level of purchasing needed to support ongoing procedures	$25,000 $1,800	$1,800	$ 2,400	$2,400	**$ 8,350**
Projected New BMPs (Total Implementation Cost)	$181,200	$232,750	$123,300	$ 60,900	**$149,538**
New and Recurring O&M for BMPs	$2,625	$13,125	$23,625	$32,812	**$18,047**
Estimated Total Program Budget	$583,391	$628,241	$552,925	$507,987	**$ 568,136**
Estimated Billing Units w 3% Projected Growth	8,000	8,240	8,487	8,742	8,367
Rate Calculated by Dividing the Estimated Total Program Budget by the Annual Estimated Billing Units	$6.08	$6.35	$5.43	$4.84	
Average Monthly Rate to Recover Estimated Total Program Budget	**$5.68**	**$5.68**	**$5.67**	**$5.67**	

9.4.2 General funding recommendations

Real Estate Acquisition - Where the purchase of land and/or the demolition of existing structures is required to execute a future BMP project, it is recommended that the City consider the option of securing these parcels now, negotiate a land-swap or taking advantage of current City land that might be available. One such example would be the demolition or relocation of a structure located at the southwest portion of the City Hall property to make that area available. This area, now used a City Hall Annex, would provide a superior location for the construction of a landscaped mitigation pond, and prevent the costly purchase of property for this purpose at a later date.

Capital projects chosen strategically – Over the course of the first five to seven years, it is highly recommended that the choice of capital projects provide uniform benefit to all areas in the City.

9.4 General Maintenance and Operations requirements

It is anticipated that the current level of operations and maintenance activities will be maintained and will increase as new Best Management Practices (BMPs) are constructed. Sweeping of approximately 105 miles of streets is expected to continue at a cost not to exceed $25,000. The recommended fiscal year 2002 budget for Stormwater Operations shown in this document totals $260,000. The base cost of the current stormwater management program is expected to remain substantially the same, however, increases are recommended to fund a part time compliance officer and to man a three-persons dredging crew. The additional personnel costs bring the total FY 2002 program budget to $399,566.

9.5 CONCLUSION

The City's stormwater funding sources, based on the existing rate of $2.75/month are inadequate to meet the growing stormwater management needs of the community. Federal and State programs require that communities such as Cocoa Beach offer specific protections for water supplies as a part of the National Pollution Elimination Discharge System Permit and other permitting programs. It is recommended that a series of Best Management Practices be constructed to address water quality and flood protection challenges. The City's stormwater utility rate structure should be optimized to maximize revenue collection. The existing rate is insufficient to fund the City's existing service level without the influx of additional grants and specially funding projects. Enhanced operations and maintenance, and the construction of high priority capital projects require additional funding at this time. Parsons has reviewed the City's rate structure with respect to a benchmark "best practice" rate structure. In general, the rate structure is sound. However, certain improvements can be made that strengthen the equity and legal soundness of the rate structure. The recommended fiscal year 2002 budget for Stormwater Operations identified in this document totals $583,391. Based on the best available information at this time, the funding of projects recommended for execution during the initial four year period

would require an increase in the existing stormwater utility rate. The average required over the next four years is estimated to be $5.68 per month per equivalent residential unit.

The following specific actions related to the rate structure are recommended:

Recommendation No. 1
The Stormwater Management Program Ordinance findings should consider referencing state and federal policies mandating stormwater management programs by local governments.

Recommendation No. 2
Reference more directly specific benefit to real property in the Stormwater Management Program Ordinance.

Recommendation No. 3
The term "dwelling unit" should be limited to single family detached dwelling units (see next recommendation). Should the city elect to bill customers as a special assessment, additional rate classes may need to be created in the Stormwater Rate Resolution. Typically these include: Single Family Residential, Multi-Family, Residential Condominium, Governmental (non-schools), Public Schools and General. General parcels would include, but not be limited to commercial establishments (including hotels), industrial properties, private schools, churches and other non-profit organizations.

Recommendation No. 4
4.a It is recommended that "residential" for purposes of establishing a base billing unit be limited to single-family detached residences.
4.b The median of the sample or universe of single family parcels should be considered for use in determining the base billing value, rather than the mean (average).
4.c The ERU value of 2,900 square feet should be updated or validated. The average billing unit for Florida utility programs is 2,798 square feet. Where the impervious area of residential driveways is not available, a statistically reliable sample should be obtained to impute driveway size to single family residential parcels. Average billing unit size is based upon only single-family units in 57% of Florida stormwater utility programs. Thirty-five percent of Florida stormwater utility programs base the billing unit size on the average of all residential types, including single and multi-family, condominiums and mobile homes. This method tends to decrease the billing unit size for all parcels, increasing the number of billing units assigned to each parcel with a calculated billing unit value.
4.d The City should consider removing reference to a specific base billing rate from the Stormwater Management Program Ordinance and adopt the specific rate in a separate, annual rate resolution.
4.e The process of determining the base billing value (currently 2,900 square feet of impervious area) should be carefully documented; the analysis should be referenced by the rate resolution.

Recommendation No. 5
5.a The City's mitigation credit should be revisited to validate the magnitude of the credit, to document how the value was determined, to provide a finite period of time for which the credit is effective and to document procedures for consistent application of the credit by City staff.

5.b It is strongly recommended that the rate structure include a site adjustment factor and policy. The policy should be based on sound engineering science; these findings should be made a part of the Stormwater Rate Resolution.

Recommendation No. 6
It is recommended that the apportionment methodology be detailed in the annual rate resolution, rather than in the Stormwater Ordinance.

Recommendation No. 7
The City should consider collecting the stormwater user-charge as a special assessment on the property tax bill rather than the current practice of piggybacking on the City's utility bill. Should the City elect to leave the charge on the utility bill, the City should stipulate in the Stormwater Management Program Ordinance that proceeds from utility bill payment are applied to water service last. This preserves a direct link between partial payment of the whole utility bill and shutting off service at the election of the City (consistent with policy) for failure to pay the bill in full.

Recommendation No 8
The City's stormwater master plan projects high priority stormwater capital improvement needs approaching $600,000 in Fiscal Years 2002-2005, and total program needs averaging $568,136 in that same four year time period. The existing rate of $2.75 per month per billing unit is well below the state equivalent average of $4.69 per billing unit and is only sufficient to recover current stormwater management operating costs in the neighborhood of $260,000 per year. With less than 8,000 total billing units, the City's rate would need to approximately $5.68 per month or $68.16 per year to meet the current stormwater management program needs during the next four years.

APPENDIX 9A
THE MECHANICS OF SPECIAL ASSESSMENTS AS A FUNDING SOURCE

The courts in Florida define special assessments as charges that are assessed against property because that property derives a special benefit from the expenditure of the money. Special assessments are paid by the owners of property in exchange for special benefit rendered to the property. Special assessments are distinguished from taxes in that there is no requirement for taxes to show a specific benefit to the taxpayer, while a clear special benefit must flow from the assessing government to the payer of an assessment (the owner of the property). The terms "special assessment" and "non-ad Valorem assessment" are used interchangeably. As the term "non-ad Valorem assessment" suggests, the assessment bears no direct relationship to the value of the property.

The Supreme Court of Florida has expressly ruled that the authority to impose special assessments is embodied in home rule authority for both counties and cities. The courts have identified a two-part test for establishing a valid special assessment. The assessment must provide "special benefit" to the property assessed and it must be "fairly and reasonably apportioned" among the benefited properties. These criteria must be embodied in the rate structure itself so that the calculation of the special assessment for any given property incorporates these concepts into each bill rendered.

Special assessments can only be used for the purposes for which they were imposed. To ensure that this requirement is met, funds from special assessments should be appropriated, deposited and disbursed through a stormwater special revenue fund so that assessment dollars are used solely for appropriated purposes and so that fund balances do not lapse into any other fund. Proceeds from a capital assessment may be deposited into a special revenue fund or directly into capital projects funds. This ensures accountability because the funds must be matched to eligible stormwater programs and projects.

The courts recognize two types of assessments: service assessments and capital assessments. ***Service*** **assessments are used solely to recover costs of rendering services of special benefit to a given property.** The service assessments can be imposed annually the County Commission or City Council wishes to use them to recover annual costs. ***Capital*** **assessments are used to recover debt service (principal and interest) or the capital share of construction projects.** Capital assessments are imposed for a time certain (usually the payback life of the debt instrument where debt is used) and typically cease once the project expenses are paid.

9A.1 SPECIAL ASSESSMENT COLLECTION OPTIONS

A jurisdiction has three realistic options available to it for collecting a stormwater special assessment; these are the:

1. Uniform Collection Method;
2. Uniform Collection Method with an option to receive periodic individual bills; and the

3. Lien and foreclosure method with collection of delinquencies under the Uniform Collection Method.

A fourth method is also technically available - the "pure" lien and foreclosure method where delinquency in payment of a special assessment is collected by the levy of a lien against the property and an ultimate foreclosure proceeding to collect payment. However, the use of this method is not advantageous to a jurisdiction for two main reasons. First, it requires an extraordinary exercise of political will to foreclose on any property and second, the foreclosure process is frequently challenged, resulting in protracted litigation before payment. Furthermore, when the special assessment is for recurring annual services, not capital infrastructure, the foreclosure process must be repeated for each year that the special assessment is imposed and not paid. Finally, the lien and foreclosure method of enforcing special assessments does not lend itself to financing capital improvements because the collection rate is not as dependable or predictable as the rate under the Uniform Collection Method.

9A.1.1 Option 1 - The Uniform Collection Method

Chapter 197 of the Florida Statutes provides that special assessments meeting the special benefit and fair and reasonable apportionment requirements may be collected on the annual ad Valorem tax bill by a jurisdiction's tax collector. The stormwater special assessment would appear on the combined notice of ad Valorem taxes and non-ad Valorem assessments. A jurisdiction may use the Uniform Collection Method for collecting and enforcing the stormwater special assessment when it follows the procedure described in section 197.3632, Florida Statutes.

When the Uniform Collection Method is used to collect special assessments, the jurisdiction can anticipate its rate of collection of special assessment(s) to be the same as its rate of collection of ad Valorem taxes. Under such statutory procedure, the ad Valorem taxes cannot be paid separately, as both ad Valorem taxes and non-ad Valorem assessments are required to be paid to satisfy the statutory lien. For most jurisdictions, this collection rate typically exceeds 95 percent. If however, a property owner fails to pay the special assessment, under the Uniform Collection Method, a jurisdiction has the right to sell a tax certificate, which ensures that a jurisdiction will be paid the amount of the special assessment that is owed. This tax certificate process also provides the property owner two years within which it may pay its delinquent taxes and special assessments without the issuance of a tax deed becoming a reality.

Thus, the Uniform Collection Method offers a jurisdiction the greatest assurances of collecting all of its billed stormwater special assessment revenue, while at the same time offering the fairness of two years for any delinquent property owners to pay the assessment and avoid the issuance of a tax deed.

9A.1.2 Option 2 - Uniform Collection Method with Option to Receive Periodic Individual Bills

A second option that is available to a jurisdiction involves a modification to the full-scale Uniform Collection Method. A jurisdiction can prepare a non-ad Valorem assessment roll, just as with the Uniform Collection Method, but offer property owners the option to receive individual, periodic stormwater bills (for example, monthly or quarterly), instead of the special assessment appearing on the property tax bill.

While election of this option by the property owner allows a property owner to pay its stormwater special assessment over the course of a year in several installments, this option presents enforcement problems similar to those encountered with the lien and foreclosure method. To avoid these collection problems, a jurisdiction could, in the event of any such delinquencies, collect the charges as non-ad Valorem assessments on the next year's non-ad Valorem assessment roll (pre-empting the owner's option for periodic billing for any delinquent parcels). This delinquency would appear on the property owner's annual tax bill, assuring that a jurisdiction has all the mechanisms available to it to effect collection of delinquencies under the Uniform Collection Method.

9A.1.3 Option 3 - Lien and Foreclosure Method, Collecting Delinquencies under the Uniform Collection Method

Finally, a jurisdiction could choose to collect the stormwater special assessments, meeting the special benefit and fair and reasonable apportionment requirements, by sending out a separate bill for the special assessment to each subject property. This method is sometimes called the "traditional method" since it was the predominate method for imposing assessments for decades until passage of the Uniform Collection Act in 1989. Payment of the bill may be enforced in one of two ways, either through a lien and foreclosure against the property or under the Uniform Collection Method in the subsequent year. As described earlier, the lien and foreclosure method is politically difficult and practically disadvantageous. The combination of a separate bill with the option to enforce non-payment through the Uniform Collection Method helps to cure some of the practical disadvantages with lien and foreclosure enforcement mechanisms.

9A.2 THE MECHANICS OF THE UNIFORM COLLECTION METHOD

Chapter 197, Florida Statures specifically details the steps required to use the Uniform Collection Method to collect the stormwater special assessment on the same bill as ad Valorem taxes. To use the tax bill collection process, a jurisdiction must carefully follow the strict procedures provided in the Uniform Collection Method.

9A.2.1 Notice of Intent

A jurisdiction must initiate the process almost a year before it intends to begin using the Collection Method to collect the special assessments. The process begins by adopting a resolution of intent (called the "Notice of Intent") at a public hearing prior to January 1 or, if the property appraiser and tax collector agree, March 1.

A jurisdiction must publish notice of its intent to consider the resolution weekly for four consecutive weeks prior to a public hearing on the matter. If the resolution is adopted,

a jurisdiction's council or commission must send a copy of it to the property appraiser, the tax collector, and the Florida Department of Revenue by January 10 or, if the property appraiser and tax collector agree, March 10.

The adoption of a resolution of intent does not obligate a jurisdiction to use the method or to impose a special assessment, but is a prerequisite to using the Uniform Collection Method.

9A.2.2The Initial Rate Resolution

A stormwater special assessment is typically imposed through the adoption of two resolutions, the Initial Rate Resolution and the Final Rate Resolution. After the adoption of an enabling ordinance (which simply authorizes the jurisdiction to impose an assessment should it so elect, usually through home rule powers), a jurisdiction will decide whether to adopt an initial assessment resolution. The Initial Rate Resolution is not required, but is used to formally declare decisions that are critical to the imposition of the special assessment.

This Initial Resolution initiates the implementation process. It describes in great detail the stormwater special assessment program and the method of apportionment. It sets a public hearing date for final consideration; and it directs and authorizes the mailing of notices to the property owners included on the initial assessment roll and the publishing of a notice of public hearing in a local newspaper. Among other things, the notice advises each property owner

- Of the proposed special assessment rate and what it is for,
- Of the date, time and place of the hearing to consider imposition of the assessment,
- Of the fact that failure to pay may lead to a loss of property title, and
- Of the number of billing units on the parcel, the proposed rate per billing unit and the estimated amount to be assessed to that parcel should the rate be adopted.

Upon adoption of the initial assessment resolution, a jurisdiction will have made the tentative decision to move forward with the imposition of special assessments to fund the stormwater budget. *Although the decision to move forward is not binding at this point, statutory time frames for notification and certification and the logistics of implementation leave a jurisdiction few alternatives after the subsequently required public hearing but to go forward with the assessments or choose to fund the stormwater budget through other revenue streams available to the jurisdiction.*

9A.2.3 The Assessment Roll

After adopting the necessary implementing documentation, a jurisdiction must develop a computerized, non-ad Valorem assessment roll that contains the basis and rate of the assessment and applies them to each parcel subject to the special assessment. From a practical standpoint, the non-ad Valorem assessment roll should utilize the parcel identification number and property use code classifications maintained by the property appraiser; it must be compatible with the ad Valorem tax roll. A critical task in the successful implementation of a non-ad Valorem assessment program is verifying the integrity of the property use database utilized to develop the assessment rate structure and, ultimately, the development of the non-ad Valorem assessment rolls on an annual basis.

The jurisdiction, not the property appraiser, must develop the non-ad Valorem assessment roll. County property appraisers are charged with the responsibility of determining the value of all property within their county and maintaining certain records connected therewith, specifically the preparation of the ad Valorem tax roll. The ad Valorem tax roll is designed solely to provide the data required by property appraisers to determine property values. Under section 197.3632, Florida Statutes, property appraisers must annually provide certain information to local governments by June 1 to assist a jurisdiction in the preparation of special assessment rolls to be collected under the Uniform Collection Method. The information must conform to that contained on the ad Valorem tax roll, but the property appraiser need not submit information that is not on the ad Valorem tax roll. If a jurisdiction determines that the information supplied by the property appraiser is insufficient to develop its non-ad Valorem assessment roll, a jurisdiction must obtain information from other sources. Obviously, the degree of cooperation received from the Office of the Property Appraiser in including, updating and consistently maintaining data relevant to property uses will have a direct effect on the quality and efficiency of the special assessment or non-ad Valorem roll.

Accordingly, successful special assessment programs are those programs that employ, to the maximum extent possible, the information maintained by the Property Appraiser on the ad Valorem tax roll. In addition, a special assessment program should be designed to maximize the local government's ability to electronically replicate and analyze the database on an annual basis, which in turn minimizes the amount of manual manipulation required of the special assessment roll.

9A.2.4 The Final Rate Resolution and Certified Roll

Where the Uniform Collection Method is employed, statutory requirements provide that a *service* assessment roll must be adopted at a public hearing between June 1 and September 15 (so the Tax Collector can merge it with the ad Valorem tax roll and mail a single bill for the combined collection of assessments and ad Valorem taxes), *capital* assessments may be imposed at any time prior to September 15. Where the Uniform Collection Method is not used, the jurisdiction may impose the assessment at any time.

At least 20 days prior to the public hearing, a jurisdiction must publish notice of the hearing in a newspaper of general circulation within the government's boundaries and by individual first class United States mail to the owners of property subject to the special assessment. After the public hearing, the jurisdiction may adopt a Final Rate Resolution that affirms the mechanics of assessment detailed in the Initial Rate Resolution and sets the final rate. The rate set at this hearing cannot be increased beyond the noticed rate without re-

noticing the owner. The rate may be lowered to any level without re-notice or the resolution may not be adopted.

If the special assessment is adopted and imposed, a certified roll must be delivered to the Tax Collector. This typically is done in electronic format (compatible with Tax Collector requirements) with certification by the Mayor, the Council Chairman or a delegated official identified in the Final Rate Resolution. The Uniform Collection Method requires that the roll be certified by September 15th of the year in which the assessment is adopted. Jurisdictions not using the Uniform Collection Method may send bills at any time.

9A.2.5 Annual Roll Maintenance

Collection of special assessments and ad Valorem taxes generally begins in November. Failure to pay the special assessments and taxes results in the issuance of a tax certificate and may result in the sale of a tax deed.

If the special assessment will be collected for a period of more than one year or will be amortized over a number of years, a jurisdiction must so specify in the published and mailed notices and therefore is not required to annually notice the special assessment rate. However, the property owners must be notified annually if their assessment increases beyond the noticed amount for the prior year. Furthermore, a jurisdiction is faced with the annual adoption of an assessment roll. (This roll is typically termed the "annual rate resolution" and incorporates elements of the initial and final rate resolutions adopted in the first year of the assessment program.) Annual notification of *all* property owners is the most efficient and effective approach to deal with re-notification required by property use or classification changes. This notification may be accomplished through the TRIM notice if the mandatory elements are provided for on the TRIM notice.

The stormwater special assessment program proposed for implementation by a jurisdiction utilizes the ad Valorem collection process provided in the Uniform Collection Method which requires the use of data available on the ad Valorem tax roll. The ad Valorem tax roll is designed solely to provide the data required by property appraisers to determine property values for ad Valorem taxation purposes. The ad Valorem tax roll preparation and date of assessment for each individual property is dictated by strict statutory timeframes. Section 192.042(1), Florida Statutes, requires real property to be assessed according to its "just value" on January 1 of each year and requires improvements that are not substantially completed on January 1 be assigned no value. A jurisdiction, and not the Property Appraiser, must initially develop and then annually update and maintain the stormwater assessment roll.

A jurisdiction's proposed stormwater assessment program typically imposes special assessments upon "developed" property only (developed can include anything short of land in a natural state). As a consequence, the timeframe required to post information to the stormwater assessment roll diverges from the posting of the same information to the ad Valorem tax roll and requires supplementary actions by a jurisdiction. Therein lies a significant challenge for any local government using the Uniform Collection Method to collect special assessments, which by their nature, are not value based but rather are premised upon the benefit the special assessment program provides to affected properties.

The stormwater special assessment is typically imposed against all "developed" property within the stormwater service area each fiscal year. Each year the assessment will be collected through the annual ad Valorem tax bill as a non-ad Valorem assessment. Due to a data lag between the improvement of property and the inclusion of the improvement

on the ad Valorem tax roll, some properties, improved between January 1and September 30, will not be shown as improved on the ad Valorem tax roll for the upcoming fiscal year. These properties will have received a certificate of occupancy before the implementation of the stormwater assessment program and therefore, may circumvent an assessment upon their receipt of a certificate of occupancy. Clearly, these improved properties will benefit from the provision of stormwater services and a jurisdiction may wish to act to subject these newly improved properties to a supplemental assessment based upon their proportionate share of the costs of stormwater services for the upcoming fiscal year.

This omission should occur in the initial year of imposition only. In subsequent years, all newly improved property can be made to pay its fair share by the imposition of an interim special assessment that is imposed when the certificate of occupancy is issued.

9A.2.6 The Supplemental or Interim Year Assessment Roll

To address this issue, a jurisdiction may consider the inclusion of this group of newly improved properties on a supplemental assessment roll for the upcoming fiscal year under the authorization of its enabling ordinance. A jurisdiction would assess newly improved properties the stormwater assessment amount that is attributable to their new improvement. The newly improved parcels would then be added to the ad Valorem tax roll for the following fiscal year by the Property Appraiser's normal procedures. Any unpaid assessments could be collected along with the subsequent year's special assessments on the tax bill.

This process could also be used in the event any improved parcels were omitted from the special assessment roll certified to the Tax Collector by September 15 of any given tax year.

A stormwater special assessment for recurrent and intended to be imposed against all improved property in the stormwater service area each fiscal year. Each year the stormwater special assessment is to be collected through the annual ad Valorem tax bill as a non-ad Valorem special assessment. Those properties (both residential and non-residential) that are newly improved are not yet on the tax roll and, depending on their date of improvement, may not appear on the ad Valorem tax roll for as many as 21 months from the time of improvement.

Using the authorization in its enabling ordinance, a jurisdiction should adopt procedures for collecting an assessment at the time of final inspection (e.g., certificate of occupancy). The special assessment to be imposed would be formulated by a monthly base rate calculated at one-twelfth the annual assessment rate for each respective property category.

9A.2.7 Failure to Pay the Assessment

For jurisdictions using the Uniform Collection Method, Florida law requires that all ad Valorem taxes and the accompanying stormwater management assessments be paid at the same time. Like any special assessment using this method, if an owner does not pay his or her property taxes and the stormwater special assessments, a lien will be placed against the property equal in rank and dignity with the liens of all state, county and municipal taxes and special assessments. Delinquency triggers the tax certificate sale and, ultimately, tax deed sale procedures stipulated by law.

For jurisdictions not using the Uniform Collection Method, payment is due as specified in the ordinance. Lien and foreclosure proceedings will be affected according to the local ordinance.

9A.2.8 Homestead Exemptions and The Assessment

Often the question is raised whether those with a valid homestead exemption are subject to the special assessment. Under Florida law, special assessments are different from property taxes; the stormwater special assessment applies to all residential property uses regardless of homestead exemption.

9A.2.9 Periodic Payments and Discounts

Many property owners pay monthly mortgage payments. Typically, the mortgage holder escrows the assessment amount, much like property taxes; the monthly mortgage payment will include payment of outstanding assessments as well as property taxes. Under the Uniform Collection Method, all payment options available to ad Valorem payments are available to payment of assessments. Since quarterly payment of taxes is provided for by statutes governing payment of property taxes, the same quarterly provisions must be made available to payment of assessments where the Uniform Collection Method is employed. This payment option is provided through the county Tax Collector.

The same discounts and penalties applicable to ad Valorem taxes also apply to special assessments collected on the tax bill. Section 197.162, Florida Statutes provides for a four percent discount for taxes and special assessments paid in November, three percent in December, two percent in January, and one percent in February. Special assessments not paid by April 1 are deemed delinquent.

9A.2.10 Use of Tax Certificates

Special assessments levied using the property tax bill collection method are treated for collection purposes just as ad Valorem (property) taxes. This means that, just like property taxes, property owners who do not pay their special assessments could lose title to their property through a tax deed sale. Prior to the tax deed sale, taxes and special assessments due on delinquent properties are auctioned to creditors at a tax certificate sale. These creditors, typically local citizens and small, specialty investment companies, bid to pay the taxes, interest, costs and charges due and hold a note from the property owner at the bid interest rate for the total amounts due.

The property owner has two years to satisfy the note at the bid interest rate. The jurisdiction gets the arrears revenues in a timely manner without the cost of foreclosure. The certificate holder has a note subordinate to none against the property and receives certain title advantages should foreclosure ultimately be required. By using the tax bill collection method of sale of tax certificates before properties can be sold at tax sale, the delinquent property owner will receive up to a two-year grace period and avoid costly traditional foreclosure proceedings.

APPENDIX 9B
FSA 2001 SURVEY - COMPARISONS WITH OTHER FLORIDA UTILITIES

Florida Jurisdiction	Monthly Billing Rate	Unit Size	Monthly Rate/1000 sq ft	Monthly Rate @ ESU = 2,900 sq ft
City of Altamonte Springs	$ 4.75	15,840	NA	NA
City of Atlantic Beach	$ 3.00	1,790	$ 1.68	$ 4.86
City of Auburndale	$ 0.50	NA	NA	NA
City of Boynton Beach	$ 6.00	1,937	$ 3.10	$ 8.98
City of Cape Coral	$ 3.00	10,000	NA	NA
City of Clearwater	$ 4.22	1,830	$ 2.31	$ 6.69
City of Cocoa	$ 2.00	2,166	$ 0.92	$ 2.68
City of Cocoa Beach	$ 2.75	2,900	$ 0.95	$ 2.75
City of Daytona Beach	$ 2.71	1,667	$ 1.63	$ 4.71
City of Deland	$ 3.60	4,900	$ 0.73	$ 2.13
City of Delray Beach	$ 4.50	2,502	$ 1.80	$ 5.22
City of Deltona	$ 2.50	2,495	$ 1.00	$ 2.91
City of Dunedin	$ 3.00	NA	NA	NA
City of Edgewater	$ 6.00	2,027	$ 2.96	$ 8.58
City of Ft. Lauderdale	$ 2.24	NA	NA	NA
City of Ft. Pierce	$ 1.50	2,186	$ 0.69	$ 1.99
City of Gainesville	$ 5.75	2,300	$ 2.50	$ 7.25
City of Hallandale	$ 1.42	958	$ 1.48	$ 4.30
City of Hialeah	$ 2.50	1,664	$ 1.50	$ 4.36
City of Holly Hill	$ 2.50	1,620	$ 1.54	$ 4.48
City of Homestead	$ 2.00	2,000	$ 1.00	$ 2.90
City of Jacksonville Bch	$ 5.00	1,541	$ 3.24	$ 9.41
City of Lake Worth	$ 2.25	1,748	$ 1.29	$ 3.73
City of Lakeland	$ 2.00	5,000	$ 0.40	$ 1.16
City of Largo	$ 2.80	2,257	$ 1.24	$ 3.60
City of Longwood	$ 3.00	2,898	$ 1.04	$ 3.00
City of Margate	$ 2.30	2,328	$ 0.99	$ 2.87
City of Miami	$ 3.50	1,191	$ 2.94	$ 8.52
City of Miramar	$ 2.00	3,619	$ 0.55	$ 1.60

Florida Jurisdiction	Monthly Billing Rate	Unit Size	Monthly Rate/1000 sq ft	Monthly Rate @ ESU = 2,900 sq ft
City of North Lauderdale	$ 2.50	2,138	$ 1.17	$ 3.39
City of North Miami	$ 2.10	1,760	$ 1.19	$ 3.46
City of North Miami Beach	$ 3.70	1,800	$ 2.06	$ 5.96
City of Oakland Park	$ 2.00	NA	NA	NA
City of Ocala	$ 3.00	1,948	$ 1.54	$ 4.47
City of Ocoee	$ 5.00	2,054	$ 2.43	$ 7.06
City of Oldsmar	$ 2.50	2,550	$ 0.98	$ 2.84
City of Orlando	$ 5.50	2,000	$ 2.75	$ 7.98
City of Oviedo	$ 4.00	2,464	$ 1.62	$ 4.71
City of Port Orange	$ 6.00	3,050	$ 1.97	$ 5.70
City of Port St. Lucie	$ 8.33	2,280	$ 3.65	$ 10.60
City of Sanford	$ 4.00	2,126	$ 1.88	$ 5.46
City of Satellite Beach	$ 3.00	3,000	$ 1.00	$ 2.90
City of St. Augustine	$ 5.00	2,000	$ 2.50	$
City of St. Petersburg	$ 4.50	2,719	$ 1.66	$ 4.80
City of Sunrise	$ 1.30	1,884	$ 0.69	$ 2.00
City of Tallahassee	$ 6.25	1,990	$ 3.14	$ 9.11
City of Titusville	$ 3.71	1,100	$ 3.37	$ 9.78
City of Venice	$ 2.98	9,489	NA	NA
City of West Palm Beach	$ 3.40	1,573	$ 2.16	$ 6.27
City of Wilton Manors	$ 3.00	3,460	$ 0.87	$ 2.51
City of Winter Garden	$ 4.00	4,077	$ 0.98	$ 2.85
City of Winter Springs	$ 2.04	2,123	$ 0.96	$ 2.79
Brevard County	$ 3.00	2,500	$ 1.20	$ 3.48
Charlotte County	$ 3.00		NA	NA
Leon County	$ 1.67	2,723	$ 0.61	$ 1.78
Miami-Dade County	$ 2.50	1,548	$ 1.61	$ 4.68
Sarasota County	$ 6.70	3,153	$ 2.12	$ 6.16
Volusia of County	$ 2.50	2,967	$ 0.84	$ 2.44
Town of Jupiter	$ 3.51	2,651	$ 1.32	$ 3.84

APPENDIX C
ALTERNATIVE FUNDING SOURCES

The right mix of funding sources remains the critical challenge facing local governments. Within the past five years, the Florida Legislature has made low cost loans more accessible to local government by opening up the State Revolving Fund ("SRF") for the funding of stormwater projects. Last year, Florida Legislators removed the 10% cap on low interest stormwater loans from the SRF and authorized the "leveraging" of SRF monies, allowing significant new monies to be available for stormwater projects. Other improvements to the SRF loan program include the adoption of a simplified application process and the availability of forms, critical application dates and other up-to-date information on SRF selection process on the FDEP Website.

For those communities choosing not to avail themselves to the SRF program, the Florida Constitution grants broad authority directly to municipalities and counties in the execution of governmental duties. In addition, both cities and counties have been individually and collectively granted numerous powers by local and general laws enacted by the Florida Legislature. Among these authorities is the power of local self-government to solve local problems, including the ability to create funding sources without the intrusion of the state legislative process.

Florida cities and counties depend on home rule authority and specific statutory authority to adopt stormwater regulations and, more recently, to create stormwater user-charge systems. Current authority provides that user fees and assessments may be imposed to fund both construction of capital projects and the operations and maintenance of existing stormwater facilities. Where fees and assessments are imposed, they must be allocated to each property in proportion to the benefits received.

9C.1 HISTORY OF HOME RULE AUTHORITY

Under the 1885 Constitution, all municipal powers were dependent on a specific delegation of authority by the Legislature in a general law or special act. As the State population grew, the number of bills increased, reaching over 2,000 bills dealing local governance issues being introduced in the 1965 session. This time-consuming responsibility led to a constitutional revision in 1968 that revolutionized the operation of local government by abolishing the requirement of an express legislative grant and giving counties the power of home rule. Absent an inconsistent general or special low, a county commission can legislate by ordinance on any issue that serves a public purpose.

The 1968 revision also affected municipal home rule power. The Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

To determine the home rule power of a municipality to legislate by ordinance, the search today is not for specific legislative authorization. The search is for a general or special law that is inconsistent with the subject matter of the proposed ordinance. Absent

an inconsistent law, a municipality has the complete power to legislate by ordinance for any municipal purpose.

9C.2 SPECIAL DISTRICTS

A distinct form of limited government, granted only expressed powers, rather than home rule power, is provided through the creation of special districts. Special Districts are defined in section 189.403(1), Florida Statues to be a local unit of special purpose (rather than general-purpose) government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. Their jurisdiction is not limited to one municipality or one county. Special districts may be either defined as independent or dependent, classifying the formation options and dictating statutory millage limitations.

A special district is "dependent" if it meets one of the following criteria:

1) Its governing body is identical to that of a single county or municipality
2) All members of the governing body are appointed by a single county or municipality
3) The members of the governing body can be removed during their un-expired term by a single county or municipality, or
4) Its budget requires approval of, or can be vetoed by, a single county or municipality.

A special district is "independent", as defined in Section 189.403(3) Florida Statues if it does not meet the criteria of a "dependent" special district (Section 189.403(2) F.S.).

A special district created by special act can authorize the levy of ad Valorem taxes within a stated millage cap subject to elector approval, however, a special act cannot authorize a special district to impose or levy any other tax. All forms of taxation, other than ad Valorem taxes, are pre-empted to the State except as provided by general law. A major disadvantage of a "special act" special district is that any charter change requires a supplemental special act adopted by the Florida Legislature.

A special district created under section 125.01(5), Florida Statutes, requires municipal consent.

9C.3 SUPPLEMENTAL HOME RULE POWERS GRANTED BY THE CONSTITUTION

Florida Statues provide that among other powers conferred upon local government, they may provide stormwater and sewage collection and disposal systems.

In addition, special districts may be created to provide local government services within such districts. Fees, assessments and taxes may be levied and collected within such districts to pay, wholly or partially, the cost of providing such services and of constructing and maintaining facilities for the services. Such districts may be created and fees, assessments, or taxes levied and collected within them.

9C. 4 INTERGOVERNMENTAL SERVICE DELIVERY

The exercise of joint powers by a city and a county through the execution of an interlocal agreement are provided for in Chapter 163, Part 1, Florida Statutes. The terms and conditions of the interlocal agreement and provision for the creation of a separate legal entity are enumerated in Section 163.01(5) Florida Statutes. Section 163.01(7)(a) provides that the interlocal agreement may create a "separate legal or administrative entity to administer" the agreement and Section 163.01(7)(c) limits the power of the legal entity created by providing that such entity shall not possess the power to levy any tax. Interlocal entities are specifically authorized to issue bonds for financing water, wastewater, alternative water supply facilities and water reuse facilities by Chapter 97-236, Laws of Florida, as amended in Section 163.01.

An interlocal agreement is a viable option to eliminate doubt and secure municipal consent for countywide programs.

9C.5 AD VALOREM TAXES

Taxes in general are the largest source of general revenue for most local governments. Taxes are exactions from taxpayers for the purpose of financing services and facilities that serve a public purpose. There is no legal mandate to tie benefit from the services or facilities provided to the community to any specific taxpayer, although the political compunction to do so is compelling. The Florida Constitution both authorizes and limits the use of ad Valorem taxes to fund the provision of local governmental services.

Article VII, section 9(b), Florida Constitution, provides, among other limitations, for the following millage limitations:

1) Ten mills for municipal purposes
2) Ten mills for county purposes
3) A county furnishing municipal services may levy additional taxes within the limits fixed for municipal purposes to the extent authorized by law.
4) Special districts may levy a millage that is both a) authorized by law and b) approved by voters.
5) The ten mills for count purposes and municipal purposes may be exceeded if approved by electors if a) for two years for general governmental purposes, and b) for the payment of bonds.

The general rule for ad Valorem taxes is that the questions of benefits and of unlawful burdens do not arise when the tax is uniform, for a public purpose and within the power of the Florida Legislature to prescribe.

9C.5.1 Dual Taxation Prohibition

The Florida Constitution prohibits the taxation of property inside a municipality by a county where no "real and substantial" benefit accrues to municipal residents and property from the county service. Article VIII, section 1(h), Florida Constitution, provides that "property situate within municipalities shall not be subject to taxation for services rendered

by the county exclusively for the benefit of the property or residents in unincorporated areas." This prohibition is limited to the power of counties to expend ad Valorem taxes, not other county revenues.

9C.5.2The Municipal Service Taxing and Benefit Unit Concept

Neither a municipal service "taxing unit" nor a "benefit unit" are "special districts", either constitutionally or functionally. A municipal service "taxing unit" is a mechanism by which a county can fund a particular service from a levy of ad Valorem taxes within a portion of the county. A municipal service "benefit unit' is the mechanism to be used when the charge is a service charge or a special assessment rather than a tax and is used fund the provision of the specific county services for which they were imposed. Both units are alike in that they are mechanisms available to a board of county commissioners to identify a precise geographic area in the county in which to impose such service charges and special assessments, without a special district status. Counties can use the municipal service "taxing unit" and "benefit unit" concept without the referendum required by the use of special districts, as long as the aggregate millage levied does not exceed the millage limits provided in Article VII, section 9(b). The Supreme Court of Florida has upheld the constitutionality of a county levy of ad Valorem taxes within a municipal service taxing unit without referendum within the 10 mill constitutional limit for municipal purposes in Gallant v. Stephens, 358 So. 2d 536 (Fla. 1978).

9C.6 USER FEES OR SERVICE CHARGES

Local governments in Florida possess the home rule authority to impose a variety of user and regulatory fees to pay the cost of providing a service or facility or regulating an activity. Non-ad Valorem taxes are, as the name suggests, those taxes levied by local government that bear no relationship to the value of property. Fees include, but are not limited to, building permit fees, rezoning fees, comprehensive plan amendment fees or recreational facility charges. Fees may also be imposed for solid waste collection and disposal services or water and sewer utility services. The underlying premise for both user and regulatory fees is that local governments may charge, in a reasonable and equitable manner, for the facilities and services they provide or regulate. Fees that fund regulatory activities and governmental services or facilities share a common trait that distinguishes them from taxes: a reasonable connection or rational nexus exists between the activity or service and the fee-payer sharing the burden of the fees imposed. This concept is discussed in detail in Appendix A.

9C.7 LOCAL OPTION SALES TAX

A major source of revenue for many local governments is the joint county and municipal local option sales tax. Several local option sales taxes have been authorized to counties by the Legislature, some of which are restricted to certain types of counties. Only counties with a population of 50,000 or less as of April 1, 1992, may levy the Small County Surtax. Proceeds are collected by the Department of Revenue and disbursed to the county

and qualified municipalities pursuant to agreement negotiated by the county government and a respective municipality based on criteria established by general law. One percent of the amount collected is paid into the state treasury general fund to defray administrative expenses.

9C.7.1 Special Local Option Sales and Use Tax

Subject to voter approval, an additional one (1) percent sales and use tax may be imposed on the purchase, sale, rental, storage and consumption of tangible personal property and related services. The Special Local Option Sales tax may be re-imposed following the expiration of the existing tax. Collection is by the Department of Revenue, and disbursement is to the county or consolidated governments, if applicable. Proceeds to be used for projects within or outside, or both within and outside, municipalities located within the county and may include one or more of the following:

- Roads, street, and bridges
- Capital outlay project for the use or benefit of county citizens (i.e. regional jail, civic center, coliseum, hospital, county or regional jail, library, detention facility, local or regional solid waste handling facility, local or regional recovered materials processing facilities, or any combination of such projects
- Capital outlay project to be operated by a joint authority of the county and one or more municipalities within the county for the use or benefit of county citizens and the citizens of one or more municipalities
- Capital outlay project consisting of a cultural, recreational, or historic facility or a facility for some combination of these purposes
- Waste or sewer capital outlay project, or combination thereof, to be owned or operated by a county water and sewer district and one or more municipalities in the county with respect to which the county has entered into a contract with such city or cities prior to the call for voter approval of the special sales tax
- The retirement of existing general obligation debt of the county, one or more cities, or any combination there of not incurred for roads, streets, or bridges if such existing dept was incurred for projects for which new general obligation debt could be incurred under the special sales tax
- Any combination of the above projects

The Special Local Option Sales and Use Tax cannot be used for more than five years or more than the maximum cost of the project(s) being funded. Consolidated governments, however, that levy this special local option sales and use tax are not subject to the five-year restriction on imposition of this tax. A consolidated government is also exempt from the requirement imposed on counties either to contract with a city on a capital outlay project or to operate such a project jointly with a city as a condition of levying this special tax.

9C.8 FEES

Fees represent charges for facilities and services rendered by government to its constituents. Typically, they are imposed in one of three ways: in exchange for a right,

service or privilege; to fund the cost of a regulatory activity; or to fund the cost of a governmental service or facility for which the owner or user creates the need for the service or facility. To be a fee, a reasonable relationship must exist between the amount charged the "consumer" of the service or user of the facility and the service or use rendered to that customer. Increasingly in the eyes of some courts, the fee must have an aspect of being "voluntary" where the potential consumer may decline the service or use of the facility.

9C.9 FRANCHISE FEES

Franchise fees are charges placed on utilities in exchange for the grant of a franchise (right to provide service) and for the use of public rights-of-way in the pursuit of that franchise. Counties do not have the authority to levy franchise charges on electric, gas, or telephone companies. They can levy franchise charges on private cable television systems in the unincorporated areas but not within a municipality, except by agreement. A consolidated government may be authorized to levy franchise charges in the same manner as a municipality, depending upon the charter of the consolidated government.

9C.10 DEVELOPER IMPACT FEES

Impact fees are charges imposed against new development to provide for the costs of capital facilities necessitated by that growth. The General Assembly has codified an entire statutory section that relates to impact fees. In general, counties may impose developer impact fees to finance certain public facilities needed to serve new growth and development. The list of facilities includes stormwater collection, retention, detention, treatment and disposal, flood control, and bank and shore protection and enhancement. Municipalities and counties that have adopted a comprehensive plan containing a "capital improvements" element are authorized to impose by ordinance development approval on all development pursuant to and in accordance with the provisions of the statute. The portion of a project for which a valid building permit has been issued prior to the effective date of a municipal or county development impact fee ordinance, shall not be subject to development impact fees, so long as the building permit remains valid and construction is commenced and is pursued according to the terms of the permit.

9C.11 STORMWATER USER-CHARGES

A stormwater user-charge is a charge placed on property owners or residents to recover the cost to the community of treating the stormwater runoff generated by that parcel. The amount of runoff generated by a parcel and sent to the stormwater system represents that parcel's *proportionate share of the burden* of creating and maintaining the stormwater system. The amount of runoff from a parcel is largely determined by the amount of impervious area (hard surfaces through which water does not easily pass) contained on a parcel – the more the impervious area, the more the runoff, the more the cost of treatment and the more the charge to the parcel owner. The nature of stormwater user-charges is discussed in more detail in Section 4 of this document.

9C.11.1 History of Stormwater User-charges

In 1976, the City of Bellevue, Washington created what has become a national prototype for a new approach to resolving stormwater management problems. Building on sewer, water and electric enterprise concept, Bellevue created a stand-alone utility whose sole mission was to build, operate and maintain stormwater facilities. More fundamentally, its funding was generated from the "customers" of the stormwater service in reasonable proportion to their actual contribution of stormwater to public facilities. Following Bellevue's lead, hundreds of cities, towns and counties across the country (including Denver, Cincinnati, Seattle/King County and many others of similar size) have adapted stormwater user-charges in their jurisdictions.

9C.11.2 Stormwater User-charges Adopted in Florida and Other States

It is estimated that some 350 to 450 user-charge based stormwater utilities have been adopted across the county, with Florida having the greatest number of utilities in the country (there, approximately 100 counties and municipalities have adopted some form of user-charge).

Research compiled by the Center for Urban Policy and the Environment indicates that average annual charges for residential properties range from $15 to $130. The research indicates that, relative to property taxes, residential users pay less under a user-charge approach, while non-single-family users typically pay more. This result is not unexpected since user-charges are typically based on the amount of impervious surface (hard surfaces through which water has difficulty percolating) - single-family residences typically have far less impervious area per parcel than their non-single family counterparts.

The Florida Stormwater Association ("FSA") has compiled rates and stormwater unit size by jurisdiction within the State of Florida. According to the 2001 FSA Stormwater Utilities Survey, the average monthly utility rate in Florida is $1.57 per month for every 1,000 sq. ft. of impervious area. This equates to approximately $3.93 per month or $47.16 per year for the typical single-family household (typically comprised of approximately 2,500 square feet of impervious area). With sixty-one jurisdictions reporting in the 2001 FSA survey, rates in Florida range from $6.00 per year in Boynton Beach to $99.96 per year in the City of Port St. Lucie. Eighteen of the reporting jurisdictions increased stormwater rates between 1999 and 2001 with rate increases averaging $1.79 per month or $21.46 per year per billing unit.