



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

I.1.

5/23/2023

Subject:

Legislative intent and permission to advertise an amendment to Chapter 62, Article X, Division 5, entitled Floodplain Protection.

Fiscal Impact:

FY22/23: Advertising Costs

Dept/Office:

Natural Resource Management Department

Requested Action:

Approval of legislative intent (option 1) for an amendment to Chapter 62, Article X, Division 5 (Floodplain Protection), Section 62-3724(4)(e), prohibiting accessory structures requiring fill in unincorporated North Merritt Island (NMI) north of Hall Road.

Summary Explanation and Background:

Historically, Brevard County has documented increasing flooding impacts in the NMI area due to intense rainfall storm events such as tropical storms and hurricanes. On August 21, 2018, the Board authorized staff to upgrade the FEMA flood model for NMI by developing a Hydrologic and Hydraulic Study (HHS) and Stormwater Model.

The Board adopted the NMI HHS and Stormwater Model on October 25, 2022. The study spans 38 square miles, from the Barge Canal north to Nasa Parkway. An integrated surface water-groundwater model was created for this specific watershed. The Stormwater Model is used for the analysis of current and future flooding conditions.

Additionally, on August 20, 2019, the Board directed staff to bring back code modifications to clearly demonstrate that development complies with current code including "cause no adverse impact to other properties" by requiring both compensatory storage and certification by an engineer that there will be no adverse impacts due to any improvements planned for any parcels seeking a permit on NMI north of Hall Road and south of State Road 405 (Area), excluding federally owned lands.

On December 5, 2019, the Board adopted modifications to Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) for floodplain protection in NMI. Section 62-3724(4) establishes stormwater criteria for the Area. Section 62-3724(4)(e) contains criteria for single-family parcels created prior to the effective date of the ordinance. This includes the ability to obtain a waiver when compensatory storage is not available as a result of insufficient depth to groundwater. However, the final

sentence of Section 62-3724(4)(e), "Accessory structures requiring fill are not permitted," has resulted in unintended consequences. The County Attorney's Office determined that the prohibition stands alone. As a result, staff must deny all applications for accessory structures requiring fill in the Area. This applies even if compensatory storage is available, or the if the site can demonstrate no adverse impacts using the HHS and Stormwater Model.

Therefore, Staff requests legislative intent and permission to advertise an amendment to Section 62-3724(4)(e), as follows:

Compensatory storage waivers shall not be granted for accessory structures requiring fill in the floodplain.

This modification reflects the intent of the code and will allow accessory structures in the Area if it can be demonstrated that there are no resulting adverse impacts. If compensatory storage is not available as a result of insufficient depth to groundwater, and the applicant cannot demonstrate that there will be no adverse impacts, the structure is presumed to pose an off-site flooding risk. Therefore, the accessory structure would not be permissible to avoid adverse impacts to the neighborhood.

Options for Board Consideration

Option 1: Approve legislative intent and permission to advertise an amendment to Section 62-3724(4)(e), as follows:

Compensatory storage for fill in the area shall be required for single family parcels created prior to the effective date of the ordinance from which this section is derived. However, written certification in subsection (4)(b) shall not be required. If compensatory storage is not available as a result of insufficient depth to groundwater, a compensatory storage waiver must be obtained from the county manager or designee by property owner or designee. The amount of fill for which a waiver may be granted shall be limited to the volume necessary to construct no more than the minimum floor area designated by the applicable zoning classification, plus on-site disposal system and necessary ingress and egress. ~~Accessory structures requiring fill are not permitted.~~ Compensatory storage waivers shall not be granted for accessory structures requiring fill in the floodplain.

Option 2: Take no action.

Option 3: Provide other direction.

Clerk to the Board Instructions:

None



May 24, 2023

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director Attn: Amanda Elmore
RE: Item I.1., Legislative Intent and Permission to Advertise an Amendment to Chapter 62, Article X, Division 5, Entitled Floodplain Protection

The Board of County Commissioners, in regular session on May 23, 2023, approved legislative intent and permission to advertise an amendment to Chapter 62, Article X, Division 5 (Floodplain Protection), Section 62-3724(4)(e), prohibiting accessory structures requiring fill in unincorporated North Merritt Island (NMI) north of Hall Road.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

cc: Finance
Budget

DIVISION 5. - FLOODPLAIN PROTECTION

Footnotes:

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Cross reference— *Stormwater, § 46-161 et seq.*

State Law reference— *Flood and drainage control programs authorized, F.S. § 125.01(1)(j); provisions regulating areas subject to flooding required, F.S. § 163.3202(2)(d).*

Sec. 62-3721. - Definitions.

For the purpose of this division, certain words pertain and are defined as follows:

Agricultural pursuits means activities related to cultivating the soil, producing crops and raising livestock.

Annual floodplain means the floodplain that is below the annual freshwater flood elevation, that is, the area which has a statistical probability of 100 percent of being flooded in any given year according to the best available data as described in section 62-3723(4).

Best management practices means those practices as developed by the U.S. Department of Agriculture, the state department of agriculture or other appropriate agencies.

Best public interest means public projects which clearly demonstrate a net benefit to the public, as determined by the board of county commissioners, and which adequately mitigate adverse environmental impacts.

Compensatory storage means the storage of floodwater that would offset the floodplain storage lost to development.

County manager means county manager or designee.

Estuarine floodplain means lands which have a surface water connection to an estuarine water body during the 100-year flood.

FIRM maps means flood insurance rate maps published by the Federal Emergency Management Agency.

Forestry means the science of application and practice of controlling forest establishment, composition and growth through sound management techniques, based on the owner's management objectives.

Hazardous materials means any material defined, listed, characterized or classified as a hazardous substance, hazardous waste or toxic substance according to any of the following state or federal codes or

regulations:

- (1) F.A.C. ch. 38F-41 (the Florida Substance List).
- (2) Title 40 of the Code of Federal Regulations part 261 (Identification and Listing of Hazardous Wastes).
- (3) Title 40 of the Code of Federal Regulations part 302.4 (Designation of Hazardous Substances).
- (4) Title 40 of the Code of Federal Regulations part 355, appendix A and B (List of Extremely Hazardous Substances).

A hazardous material includes any solution, mixture or formulation containing such materials, and also includes any material which, due to its chemical or physical characteristics, is determined by the county manager to pose a substantial threat to life, health or safety of persons or property or to the environment.

Isolated floodplain means any floodprone area which does not have a direct surface water connection to an estuarine or riverine water body.

Mean annual floodplain means the floodplain that is below the annual freshwater flood elevation, that is, the area which has a statistical probability of being flooded at least once every 2.33 years according to the best available data as described in section 62-3723(4).

100-year to 25-year riverine floodplain means the floodplain that is at or below the 100-year freshwater flood elevation, but above the 25-year freshwater flood elevation. The 100-year floodplain has a statistical probability of one in 100 of being flooded in any given year according to the best available data as described in subsection 62-3723(4).

Overriding public benefit means the result of a development action by a private property owner that substantially preserves, restores or enhances those natural functions which define areas of critical concern, environmentally sensitive areas, shorelines or water bodies, identified by the county comprehensive plan. Natural resources management department or state or federal agencies. An overriding public benefit shall include, but not be limited to, proposals which preserve, restore or enhance floodplain, wetland, shoreline or prime aquifer recharge functions and provide for the dedication of associated lands to the county or other acceptable public entity or agency.

Public interest means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.

Redevelopment means the renovation of a previously developed obsolete commercial or industrial parcel of land or building site which suffers from structural vacancy due to the expiration of its former use and requires intervention to achieve a subsequent useful function and come into compliance with all other current environmental and land development regulations.

Riverine floodplain means lands which have a surface water connection to a major freshwater surface water body during the 100-year flood.

Ten-year floodplain means the floodplain that is at or below the ten-year flood elevation, that is, the area which has a statistical probability of one in ten of being flooded in any given year according to the best available data as described in subsection 62-3723(4).

25-year to ten-year riverine floodplain means the floodplain that is at or below the 25-year freshwater flood elevation, but above the ten-year freshwater flood elevation. The 25-year floodplain has a statistical probability of one in 25 of being flooded in any given year according to the best available data as described in subsection 62-3723(4).

(Code 1979, § 14-84.1; Ord. No. 02-08, § 1, 2-26-02; Ord. No. 2015-27, § 1, 9-3-15)

Cross reference— Definitions generally, § 1-2.

Sec. 62-3722. - Purpose and intent.

It is the purpose and intent of this division to protect and restore, where feasible, the natural functions of floodplains within the county. It is also the intent of this division to apply the standards set out in this division for development in floodplains and floodprone areas.

(Code 1979, § 14-84; Ord. No. 02-08, § 2, 2-26-02)

Sec. 62-3723. - General provisions.

All site plans, subdivision plats, building permits, and other active development orders shall be reviewed by the Natural Resources Management Department to determine their impact upon the estuarine, isolated, and riverine floodplains. The following regulations shall apply to development and redevelopment in, or impact to, designated floodplains and flood-prone areas:

- (1) The following uses shall be permitted within the riverine 100-year, riverine 25-year, riverine ten-year, estuarine, and isolated floodplains of the county:
 - (a) Agricultural pursuits, including forestry silviculture operations, utilizing best management practices, and agricultural structures which will not restrict the flow of floodwaters above the ten-year floodplain elevation;

- (b) Recreation consistent with the requirements of the floodplain;
- (c) Fish and wildlife management; and
- (d) Open space.

All site plans, subdivision plats, building permits, and other active development orders shall meet floodway criteria in chapter 62, article XI, division 3, standards for flood hazard reduction, section 62-4062(5).

- (2) Development within floodplain areas shall not have adverse impacts upon adjoining properties.
- (3) Development within all floodplains shall be required to obtain a land alteration permit, if subsequently required by ordinance, with the exception of residences which are limiting fill to house pads, septic systems and single access roads. However, the amount and placement of fill being used must be included within the building permit applications for such single-family residences. This exception is not an exemption from 44 CFR § 60.3(a)(1), (b)(1), (c)(1), (d)(1), or (e)(1), but only from the requirement of obtaining a land alteration permit under article XIII, division 4.
- (4) Elevations of the riverine 100-year, riverine 25-year, and ten-year floodplains shall be determined utilizing the best available data, which includes FIRM maps and the Flood Insurance Study for Brevard County, Florida and Unincorporated Areas, April 3, 1989, prepared by the Federal Emergency Management Agency; and the Mean Annual, ten-year, 25-year and 100-year Profiles for the Upper St. Johns River Under the Existing Conditions, prepared by Dr. Donthamesetti V. Rao, P.E., St. Johns River Water Management District (March 1985).
- (5) Development in isolated floodplain areas shall ensure that off-site post development stormwater discharge rates shall not exceed off-site predevelopment discharge rates. All site plans, subdivision plats, building permits, and other active development orders shall meet the criteria in chapter 62, division 6, stormwater criteria, and article XI, division 3, standards for flood hazard reduction, section 62-3724(e)(4) as it relates to isolated floodplains.
- (6) All site plans, subdivision plats, building permits, and other active development orders shall meet standards for flood hazard reduction criteria in chapter 62, article XI, division 3, and stormwater criteria in chapter 62, division 6.
- (7) Development practices shall be encouraged to minimize total imperviousness and runoff within the riverine floodplain and preserve the flood storage capacity in order to minimize cost to life and property. Practices may include clustering of developed area, provisions for open space, low impact design features, and floodproofing.

(Code 1979, § 14-84.2; Ord. No. 02-08, § 3, 2-26-02; Ord. No. 2014-14, § 1, 5-1-14; Ord. No. 2015-27, § 2, 9-3-15; Ord. No. 2019-26, § 1, 12-5-19)

Sec. 62-3724. - Development regulations.

- (1) There shall be no net change in the rate and volume of floodwater discharged from the pre-development 100-year, 25-year, ten-year, or mean annual riverine floodplain.
 - (a) Within the 100-year riverine floodplain (that is the area that is below the 100-year flood elevation but above the 25-year flood elevation).
 - (i) Residential density shall be limited to no more than two dwelling units per acre.
 - (ii) Commercial, institutional, and industrial land uses shall be limited to a filled footprint of no more than 15,000 square feet per acre, except for redevelopment as specified in subsection 62-3724(1)(f).
 - (iii) Density may be transferred from areas within the 25-year to 100-year riverine floodplain to areas above the riverine 100-year floodplain at a density consistent with the service sector.
 - (iv) Any expansion of commercial and industrial structure footprint, including parking areas, within the 100-year to 25-year riverine floodplain greater than 25 percent of the earliest permitted development footprint size shall be reviewed by the natural resources management department for compliance.
 - (v) Development shall not adversely impact the drainage of adjoining properties. There shall be no net loss of flood storage capacity of the 100-year riverine floodplain, except that undeveloped parcels created prior to February 17, 2011, may fill up to $\frac{1}{3}$ acre for development without providing compensatory storage. For other parcels, compensatory storage shall be required for all fill within the floodplain. Compensatory storage calculations for proposed development shall be submitted and approved by engineering staff prior to final approval of any new lot creation, site plan or subdivision application. All site plans, subdivision plats, building permits, and other active development orders shall meet the criteria in chapter 62, division 6, stormwater criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins).
 - (vi) Development of a lot or parcel within the 100-year to 25-year riverine floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, on-site sewage disposal system and buffer, potable on-site well and buffer, and access to the primary and accessory structures. These areas shall be

elevated to or above the 100-year base flood elevation (BFE). All site plans, subdivision plats, building permits, and other active development orders shall meet the criteria in chapter 62, division 6, stormwater criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins). All site plans, subdivision plats, building permits, and other active development orders shall also meet floodplain protection criteria in chapter 62, article X, division 5; standards for flood hazard reduction criteria in chapter 62, article XI, division 3; and stormwater criteria in chapter 62, division 6.

- (vii) Access to single-family residential structures on lots adjoining a government maintained road that is not elevated to or above the 100-year BFE and not scheduled to be upgraded within five years from the time of residential permit submittal, may be developed at the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (b) Within the 25-year floodplain (that is the area that is at or below the 25-year flood elevation but above the ten-year flood elevation).
 - (i) Residential density shall be limited to not more than one dwelling unit per two and one-half acres.
 - (ii) Commercial and institutional land uses shall be limited to a filled footprint of no more than 3,000 square feet per acre. Commercial uses shall be no greater than one acre, except for redevelopment as specified in section 62-3724(1)(f).
 - (iii) Within the same project, the following transfer of densities may occur consistent with the service sector:
 - 1. Development densities of one dwelling unit per acre may be transferred out of areas in the ten-year to 25-year floodplain to areas in the 25-year to 100-year riverine floodplain.
 - 2. Development densities consistent with the service sector may be transferred out of the ten-year to 25-year floodplain to areas above the riverine 100-year floodplain.
 - (iv) Industrial land uses shall be prohibited, unless the activity is in the best public interest, or except for mining where it does not increase the filled footprint within the 25-year floodplain.
 - (v) Any expansion of commercial structures, including parking areas, greater than 25 percent of the earliest permitted development footprint size shall be reviewed by the natural resources management department for compliance.
 - (vi) Development shall not adversely impact the drainage of adjoining properties. There

shall be no net loss of flood storage capacity of the 25-year riverine floodplain.

Compensatory storage calculations for proposed development shall be submitted and approved by engineering staff prior to final approval of any new lot creation, site plan or subdivision application. All site plans, subdivision plats, building permits, and other active development orders shall meet the criteria in chapter 62, division 6, stormwater criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins).

- (vii) Development requiring a land alteration permit, if subsequently required by ordinance, shall not cause a net loss in flood storage capacity within the floodplain.
- (viii) Development of a lot or parcel within the ten-year to 25-year floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, on-site sewage disposal system and buffer, potable on-site well and buffer, and access to the primary and accessory structures. These areas shall be elevated to or above the 100-year base flood elevation. All site plans, subdivision plats, building permits, and other active development orders shall meet floodplain protection criteria in chapter 62, article X, division 5; standards for flood hazard reduction criteria in chapter 62, article XI, division 3; and stormwater criteria in chapter 62, division 6.
- (ix) Access to single-family residential structures on lots adjoining a government maintained road that is not elevated to or above the 100-year BFE and not scheduled to be upgraded within five years from the time of residential permit submittal, may be developed at the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (c) Within the ten-year riverine floodplain (that is the area that is at or below the ten-year flood elevation but above the mean annual flood elevation).
 - (i) Residential density shall be limited to not more than one dwelling unit per ten acres.
 - (ii) Commercial, institutional, and industrial land uses shall be prohibited unless they are in the public interest and the location of the use is integral to its operation.
 - (iii) Within the same project, the following transfer of densities may occur consistent with the service sector:
 1. Development densities of one dwelling unit per five acres may be transferred out of areas below the ten-year floodplain to areas in the ten-year to 25-year riverine floodplain.
 2. Development densities of one dwelling unit per acre may be transferred out of areas below the ten-year floodplain to areas in the 25-year to 100-year riverine

floodplain.

3. Development densities consistent with the service sector may be transferred out of the ten-year floodplain to areas above the riverine 100-year floodplain.
- (iv) Development, except for permitted uses, shall be transferred out of the ten-year floodplain unless the project has a special reason or need to locate below the ten-year floodplain and is found to be in the overriding public interest.
- (v) Any expansion of commercial structures, including parking areas, greater than 25 percent of the earliest permitted development footprint size shall be reviewed by the natural resources management department for compliance.
- (vi) Development shall not adversely impact the drainage of adjoining properties. There shall be no net loss of flood storage capacity of the ten-year riverine floodplain. Compensatory storage calculations for proposed development shall be submitted and approved by engineering staff prior to final approval of any new lot creation, site plan or subdivision application. All site plans, subdivision plats, building permits, and other active development orders shall meet the criteria in chapter 62, division 6, stormwater criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins).
- (vii) Development requiring a land alteration permit, if subsequently required by ordinance, shall not cause a net loss in flood storage capacity within the floodplain.
- (viii) Development of a lot or parcel within the ten-year to mean annual floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, on-site sewage disposal system and buffer, potable on-site well and buffer, and access to the primary and accessory structures. These areas shall be elevated to or above the 100-year base flood elevation. All site plans, subdivision plats, building permits, and other active development orders shall also meet floodplain protection criteria in chapter 62, article X, division 5; standards for flood hazard reduction criteria in chapter 62, article XI, division 3; and stormwater criteria in chapter 62, division 6.
- (ix) Access to single-family residential structures on lots adjoining a government maintained road that is not elevated to or above the 100-year BFE and not scheduled to be upgraded within five years from the time of residential permit submittal, may be developed at the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (d) Within the mean annual riverine floodplain (that is the area that is at or below the annual

flood elevation) residential, commercial, institutional, and industrial land uses shall be prohibited unless the project has a special reason or need to locate within the annual floodplain and it is in the best public interest. The annual riverine floodplains within Brevard County should be left in their natural state, and re-established where feasible.

- (e) To facilitate redevelopment of commercial and industrial land uses, the filled footprint restrictions may be exceeded if compensatory storage is provided. If on-site storage is not feasible, non-contiguous compensatory storage, hydrologically connected to the impacted floodplain may be considered. Off-site compensatory storage shall require an easement that secures perpetual off-site drainage.
 - (f) Basins historically separated from the riverine floodplain by berms, dikes, pumps, or other manmade methods shall be considered connected to the floodplain unless such flood control measures are accredited by FEMA. The filled footprint restrictions for commercial and industrial development on a parcel may be exceeded if all of the following criteria are met:
 - (i) The basin was established and continuously maintained prior to September 9, 1988.
 - (ii) The parcel shall have had a commercial or industrial zoning classification prior to and since September 9, 1988; and its current commercial or industrial zoning classification and FLU designation are consistent pursuant to section 62-1255.
 - (iii) Historical flow of water is maintained or rerouted in such a way as the upstream and downstream property owners are not negatively impacted.
 - (iv) Where the basin is managed through the operation of pump(s), the applicant shall provide flood management independent of any off-site flood control measures. Where off-site pumping controls or assists removal of stormwater from the basin, a pumping agreement detailing pumping elevations, rates, and cost sharing shall be created which is binding on all parties and transfers with the properties and any subdivisions thereof until or unless a property is removed from the basin.
 - (v) A flood study of the basin shall be completed by a professional engineer registered in the State of Florida. The flood study shall affirmatively demonstrate that the modified filled footprint restrictions shall not adversely impact the drainage of adjoining properties, both internal and external to the basin. The flood study shall include the 24- and 96-hour storms for critical floods including, but not limited to, the mean-annual, ten-year, 25-year, and 100-year storm events.
 - (vi) A subsequent conversion to a non-commercial or non-industrial future land use shall require a retrofit of compensatory storage.
- (2) Estuarine floodplain.

- (a) Development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality.
 - (b) Development of a lot or parcel within an estuarine floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, access to the primary and accessory structure. These areas shall be elevated to or above the 100-year base flood elevation. All site plans, subdivision plats, building permits, and other active development orders shall also meet floodplain protection criteria in chapter 62, article X, division 5; standards for flood hazard reduction criteria in chapter 62, article XI, division 3; and stormwater criteria in chapter 62, division 6.
 - (c) Access to single-family residential structures on lots adjoining a government maintained road that is not elevated to or above the 100-year BFE and not scheduled to be upgraded within five years from the time of residential permit submittal, may developed at the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (3) Isolated floodplain.
- (a) Development within an isolated floodplain shall not negatively impact adjacent properties or receiving water body quality.
 - (b) Development of a lot or parcel within an isolated floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, access to the primary and accessory structure. These areas shall be elevated to or above the 100-year base flood elevation. All site plans, subdivision plats, building permits, and other active development orders shall also meet floodplain protection criteria in chapter 62, article X, division 5; standards for flood hazard reduction criteria in chapter 62, article XI, division 3; and stormwater criteria in chapter 62, division 6.
 - (c) Access to single-family residential structures on lots adjoining a government maintained road that is not elevated to or above the 100-year BFE and not scheduled to be upgraded within five years from the time of residential permit submittal, may be developed at the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
 - (d) Compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the floodplain greater than one-third acre in size regardless of the date the lot was created. Compensatory storage for lots within a platted subdivision created after the effective date of this ordinance shall be provided. Compensatory storage calculations for proposed development shall be submitted and approved by engineering

staff prior to final approval of any new lot creation, site plan or subdivision application. All site plans, subdivision plats, building permits, and other active development orders shall meet the criteria in chapter 62, division 6, stormwater criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins).

- (4) Development, land alteration, or grading on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, hereinafter referred to as "area," are subject to the following requirements:
 - (a) Compensatory storage; and
 - (b) Written certification from the engineer of record that there will be no adverse flooding impacts upon properties within the area resulting from the proposed development. Written certification shall be required prior to issuance of a land alteration permit, building permit, site plan, preliminary plat approval, or any other authorization for grading or drainage modifications. The engineer of record shall certify that the proposed development will not increase flood stages, and will not increase the duration of the peak flood stages within the area. Such certification shall be accompanied by a report supporting the certification. This report shall include full engineering data and analysis, in compliance with good engineering practices, and any and all applicable standards, criteria, and regulatory requirements, including the hydraulic and hydrologic modelling and analysis demonstrating that there is no impact; and
 - (c) Sealed pre-existing topographic survey or engineered site plan delineating floodplain limits on the property, if any, with base flood elevation using best available flood elevation data. Delineation of floodplains shall use best available pre-alteration ground elevation data.
 - (d) A waiver from the compensatory storage requirement may be granted by the county manager or designee where the engineer of record certifies that the proposed design does not increase peak flood stage or duration, based on a stormwater model accepted by the board of county commissioners. Any such stormwater model shall be based on best available data addressing, at minimum; water storage, water volume, groundwater elevations, peak stages, and peak rates for the area.
 - (e) Compensatory storage for fill in the area shall be required for single family parcels created prior to the effective date of the ordinance from which this section is derived. However, written certification in subsection (4)(b) shall not be required. If compensatory storage is not available as a result of insufficient depth to groundwater, a compensatory storage waiver must be obtained from the county manager or designee by property owner or designee. The amount of fill for which a waiver may be granted shall be limited to the volume necessary to construct no more than the minimum floor area designated by the

applicable zoning classification, plus on-site disposal system and necessary ingress and egress. Accessory structures requiring fill are not permitted.

- (f) Properties, including portion thereof, demonstrating discharge of site runoff directly to the Indian River Lagoon, through sheet flow, channels, and/or stormwater systems, without reliance on other conveyances and/or stormwater systems serving other properties, and without impeding flows from other properties to the Indian River Lagoon, are exempt from the compensatory storage requirement.
- (g) An as-built survey shall be submitted to the county within 60 days of project completion.
- (h) Any engineered compensatory storage approved by the county shall be maintained by the owner in perpetuity. Any modifications to the system require approval under this section.
- (i) Land alteration and grading in the area are prohibited unless reviewed and approved under this subsection and subsection 62-4421(a)(5).

(Code 1979, § 14-84.3; Ord. No. 02-08, § 4, 2-26-02; Ord. No. 04-07, § 1, 2-24-04; Ord. No. 09-03, § 1(Attch. C), 1-13-09; Ord. No. 2014-14, § 1, 5-1-14; Ord. No. 2015-27, § 3, 9-3-15; Ord. No. 2019-26, § 2, 12-5-19)

Sec. 62-3725. - Prohibitions.

- (1) New dikes, levees or other structures shall not be permitted below the riverine 100-year flood elevation except for structures that have a maximum height of less than the ten-year flood elevation and which will not restrict the flow of the riverine 100-year storm floodwaters. The only potential exceptions to this provision are structures which are shown to have overriding public benefit. Replacement or repair of non-breached dikes is permitted as long as such replacement or repair does not change the status of the floodplain or will maintain the existing ability to utilize the property.
- (2) The following specific uses are not compatible within the floodplain and shall not be permitted:
 - (a) Placing, depositing or dumping of solid wastes, including sludge, septage, unprocessed scallop shells and viscera, except for land-spreading for agricultural pursuits or for treated municipal solid sludge; and
 - (b) Commercial processing, storing and disposal of hazardous materials.

(Code 1979, § 14-84.4; Ord. No. 02-08, § 5, 2-26-02; Ord. No. 2015-27, § 4, 9-3-15)

Sec. 62-3726. - Penalties; additional remedies.

Penalties for violations of this division shall be specified in F.S. § 125.69, or section 1-7 of the County Code. The county manager shall be responsible for reviewing and approving all mitigation agreements,

which shall be subject to the approval of the board of county commissioners. The provisions of this section are an additional and supplemental means of enforcing county codes and ordinances. Nothing in this section shall prohibit the county from enforcing this section by injunctive relief, or by any other means provided by law.

(Ord. No. 02-08, § 6, 2-26-02)

Sec. 62-3727. - Administration.

The county manager shall be responsible for the general administration of this division of this article. The county manager shall be responsible for all reviews of all applications, in addition to providing the administrative decisions that pertain to this division. The county manager shall provide written confirmation of any decision or findings relating to applications or reviews made pursuant to this division and letters of interpretation or intent.

(Ord. No. 02-08, § 7, 2-26-02)

Secs. 62-3728—62-3750. - Reserved.